



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor

Suzanne Lee Chan, Vice Mayor

Anu Natarajan

Bill Harrison

Dominic Dutra

City Staff

Fred Diaz, City Manager

Harvey E. Levine, City Attorney

Mark Danaj, Assistant City Manager

Dawn G. Abrahamson, City Clerk

Harriet Commons, Finance Director

Marilyn Crane, Information Technology Svcs. Dir.

Annabell Holland, Community Services Director

Norm Hughes, City Engineer

Bruce Martin, Fire Chief

Jim Pierson, Public Works Director

Jeff Schwob, Interim Community Dev. Director

Suzanne Shenfil, Human Services Director

Craig Steckler, Chief of Police

Brian Stott, Human Resources Director

Lori Taylor, Economic Development Director

Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
JUNE 14, 2011
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – for the Regular Meetings of January 4, 2011, May 3, 2011, and the Special and Regular Meetings of June 7, 2011*
- 2.3 **MANAGEMENT PARTNERS CONTRACT AMENDMENT**
Authorize the City Manager or Designee to Execute a Contract Amendment with Management Partners Related to Personnel Services in the Additional Amount of up to \$40,000 for a Total of \$136,000

Contact Person:

Name:	Christina Brusaca	Jeff Schwob
Title:	Office Specialist II	Interim Director
Dept.:	Public Works	Community Development
Phone:	510-494-4711	510-494-4527
E-Mail:	cbrusaca@fremont.gov	jschwob@fremont.gov

RECOMMENDATION: *Authorize the City Manager or designee to execute a Contract Amendment with Management Partners for up to an additional amount of \$40,000, for a total of \$136,000.*

2.4 AUTHORIZATION TO PURCHASE BAUER AIR COMPRESSORS

Authorization to Issue a Purchase Order to Bauer Compressors, Inc., for the Purchase of Two Air Compressors to Replace Outdated and Failing Equipment Currently in Use by the Fire Department

Contact Person:

Name:	<i>Kelly Sessions</i>	<i>Bruce Martin</i>
Title:	<i>Business Manager</i>	<i>Fire Chief</i>
Dept.:	<i>Fire</i>	<i>Fire</i>
Phone:	<i>510-494-4281</i>	<i>510-494-4202</i>
E-Mail:	<i>ksessions@fremont.gov</i>	<i>bmartin@fremont.gov</i>

RECOMMENDATION: *Authorize the City Manager or designee to issue a purchase order to Bauer Compressors, Inc., in the amount of \$113,989 for the purchase of air compressors by using the County of Los Angeles Contract No. MA-IS-1040425-2.*

2.5 APPROVAL TO AMEND THE STREETLIGHT AND EXTERIOR PUBLIC FACILITIES LIGHT MAINTENANCE CONTRACT WITH REPUBLIC ITS (SIEMENS)

Authorize the City Manager or Designee to Amend the Streetlight and Exterior Facilities Light Maintenance Contract with Republic ITS (Seimens) for Additional Work in the Amount of \$200,000, for a New Not-to-Exceed Amount of \$836,495

Contact Person:

Name:	<i>Fred Hebener</i>	<i>Frank Morgan</i>
Title:	<i>Streets Supervisor</i>	<i>Deputy Director of Maintenance</i>
Dept.:	<i>Public Works</i>	<i>Public Works</i>
Phone:	<i>510-979-5719</i>	<i>510-979-5701</i>
E-Mail:	<i>fhebener@fremont.gov</i>	<i>fmorgan@fremont.gov</i>

RECOMMENDATION: *Authorize the City Manager or his designee to execute a contract amendment in the amount of \$200,000 for additional Streetlight and Exterior Public Facilities Lighting services for a new not-to-exceed amount of \$836,495 for the 2010/11 fiscal year.*

2.6 FIRST RESPONDER ADVANCED LIFE SUPPORT SERVICES AGREEMENT

Authorize the City Manager to Negotiate a Short-term Agreement to Continue the Provision of First Responder Advanced Life Support Services

Contact Person:

Name:	<i>Kelly Sessions</i>	<i>Bruce Martin</i>
Title:	<i>Business Manager</i>	<i>Fire Chief</i>
Dept.:	<i>Fire Department</i>	<i>Fire Department</i>
Phone:	<i>510-494-4281</i>	<i>510-494-4202</i>
E-Mail:	<i>ksessions@fremont.gov</i>	<i>bmartin@fremont.gov</i>

RECOMMENDATION: Authorize the City Manager or his designee to negotiate an interim solution and to execute an agreement implementing the solution regarding the continued provision of First Responder Advanced Life Support services by the City of Fremont for the County of Alameda.

2.7 FREMONT LANDSCAPING ASSESSMENT DISTRICT 88

Public Hearing (Published and Posted Notice) To Conduct A Public Hearing on the Levy of Annual Assessments for Landscaping Assessment District 88 and Adopt a Resolution Confirming Diagrams and Assessments for District 88 for Fiscal Year 2011/12

Contact Person:

<i>Name:</i>	<i>Andrew Russell</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Senior Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4534</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>arussell@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATIONS:

- 1. Open public hearing for Levy of Annual Assessment for Existing Zones in District 88.*
- 2. Consider all oral statements and written protests.*
- 3. Close public hearing.*
- 4. Levy the proposed assessment by adopting a resolution confirming Diagrams and Assessments for Fiscal Year 2011/12 for Fremont Landscaping Assessment District 88 Zones 1-17, 19-21 and 23-47 (Exhibit B).*

3. CEREMONIAL ITEMS – None.

4. PUBLIC COMMUNICATIONS

4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – The Public Financing Authority Board has been cancelled. [See separate notice](#) (lilac paper).

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

5.1 SECOND PUBLIC HEARING AND ADOPTION OF FISCAL YEAR 2011/12 OPERATING BUDGET AND APPROPRIATIONS LIMIT

Second Public Hearing (Published Notice, Hearing Continued from June 7, 2011) and Adoption of Fiscal Year 2011/12 Operating Budget and Appropriations Limit

Contact Person:

Name:	Catherine Chevalier	Harriet Commons
Title:	Budget and Revenue Manager	Director
Dept.:	Finance	Finance
Phone:	510-494-4615	510-284-4010
E-Mail:	cchevalier@fremont.gov	hcommons@fremont.gov

RECOMMENDATION:

1. Hold a public hearing on the operating budget and appropriations limit for FY 2011/12.
2. Adopt a resolution approving the City of Fremont Operating Budget for FY 2011/12.
3. Adopt a resolution creating an appropriations limit of \$508,665,119 for FY 2011/12.

5.2 SECOND PUBLIC HEARING (PUBLISHED NOTICE) ON FISCAL YEAR 2011/12 – 2015/16 CAPITAL IMPROVEMENT PROGRAM

Second Public Hearing and Consideration of Adoption of the FY 2011/2012 - 2015/2016 Capital Improvement Program (CIP)

Contact Person:

Name:	Sean O'Shea	Norm Hughes
Title:	Management Analyst II	City Engineer
Dept.:	Public Works	Public Works
Phone:	510-494-4777	510-494-4748
E-Mail:	soshea@fremont.gov	nhughes@fremont.gov

RECOMMENDATIONS:

1. Hold a public hearing on the five-year FY 2011/12 – 2015/16 Capital Improvement Program (CIP).
2. Adopt a resolution approving the FY 2011/12 – 2015/16 CIP, including the appropriation of the proposed funding amounts from the funding sources shown in the Fund Source and Use report for all five fiscal years, with appropriations for FY 2011/12 to be made effective July 1, 2011 and appropriations for FY 2012/13 to be made effective July 1, 2012.
3. Approve (reaffirm) the long-term capital debt policy as included in the FY 2011/12 – 2015/16 CIP.
4. Authorize the City Manager to adjust the timing of appropriations approved by the City Council. (This allows accelerating or deferring the timing of these funds in response to changed conditions, but does not change the total appropriations for any project.)
5. Authorize the City Manager to transfer appropriations up to \$50,000 per project from the Capital Improvement Program Cost and Scope Contingency (PWC 8101) and the Emerging Project Reserve (PWC 7101) as necessary.
6. Approve appropriation transfers from the Measure WW Administrative Cost project (funded in the current CIP in 2011/12 under Fund 540, Park Facility Impact Fees) to cover staff costs on all the individual Measure WW funded projects, as needed, to cover the total staff costs on those projects.
7. Appropriate the donation received from the Indo-American Community Federation of \$25,000 to 502PWC8745, Central Park Picnic Area.

5.3 APPEAL OF PLANNING COMMISSION APPROVAL OF CONDITIONAL USE PERMIT AMENDMENT FOR STARS DAY SPA – 46819 WARM SPRINGS BLVD. Public Hearing (Published Notice) to Consider a Third Party Appeal of a Planning Commission Decision to Approve an Amendment to a Conditional Use Permit (PLN2010-00106) to Allow Full-Body Massage Services at an Existing Day Spa Currently Offering Foot Massage Services Only (PLN2011-00177)

Contact Person:

Name:	Stephen Kowalski	Barbara Meerjans
Title:	Associate Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4451
E-Mail:	skowalski@fremont.gov	bmeerjans@fremont.gov

RECOMMENDATION:

1. Hold the public hearing;
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15301, Leasing of Existing Facilities;
3. Find the project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives, and policies set forth in the Land Use and Local Economy Chapters of the City's General Plan as enumerated within the staff report; and
4. Deny the appeal and uphold the approval of Conditional Use Permit Amendment PLN2011-00177 as shown in Exhibit "A" and described in Informational Item #1, based on the findings and as conditioned by the Planning Commission as shown in Exhibit "B".

5.4 NILES CENTRAL REZONE - 37682 NILES BOULEVARD

Public Hearing (Published Notice) to Consider Planning Commission and Historical Architectural Review Board Recommendations on a City-Initiated Planned District (P-2011-232) to Provide Specific Development Considerations for a Future Commercial Mixed-Use Project on Two Lots (APNs 507-0828-005-00 and 507-0828-006-00) Comprising 4.07 Acres in the Niles Planning Area

Contact Person:

Name:	Joel Pullen	Barbara Meerjans
Title:	Associate Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4436	510-494-4451
E-Mail:	jpullen@fremont.gov	bmeerjans@fremont.gov

RECOMMENDATIONS:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15061(b)(3) of the CEQA Guidelines because the activity (Planned District) has no potential for causing a significant effect on the environment.
3. Find Planned District P-2011-232, as shown on Exhibits "A" & "B", is compatible with the Niles Historical Overlay District and is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the policy set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Niles Concept Plan.
4. Find the Planned District Rezoning Map, Regulations and Design Guidelines depicted in Exhibits "A" & "B" fulfill the applicable requirements set forth in the Fremont Municipal Code.
5. Introduce an ordinance rezoning the property from Community Commercial (Historical Overlay District) [C-C(HOD)] to Planned District P-2011-232 (Historical Overlay District) [P-2011-232(HOD)] as depicted on Exhibit "A" and adopt Planned District Regulations and Design Guidelines as shown on

- Exhibit “B” subject to the finding in Exhibit C.
6. Direct staff to prepare and the clerk to publish a summary of the ordinance.

5.5 URBAN HOUSING GROUP PROJECT PLANNED DISTRICT MAJOR AMENDMENT, NAMING OF A CIVIC PARK, AUTHORIZATION TO EXECUTE VARIOUS AGREEMENTS – 3651 WALNUT AVENUE (PLN2011-00190)
Public Hearing (Published Notice) to Consider a Planning Commission Recommendation for a Major Amendment to Planned District P-2009-9 to Modify Conditions, Allow Minor Site Plan Changes, and to Reduce the Amount of Required on-site Parking for 301 Dwelling Units, an Approximately 17,000 Square Foot Civic Park, and Approximately 1,200 Square Feet of Office/Commercial Space; Naming of a Civic Park; Authorization to Execute Various Agreements

Contact Person:

Name:	Wayne Morris	Barbara Meerjans
Title:	Senior Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4729	510-494-4451
E-Mail:	wmorris@fremont.gov	bmeerjans@fremont.gov

RECOMMENDATION:

1. Hold public hearing.
2. Find that consistent with CEQA Guideline 15162, no changes to the project or site circumstances have occurred, not has new information of substantial importance been discovered, and the previous adopted Mitigated Negative Declaration and Mitigation Monitoring Plan are still valid and no further environmental analysis is required, and this action reflects the independent judgment of the City of Fremont.
3. Find that the Planned District Major Amendment (PLN2011-00190) to Planned District P-2009-9 is in conformance with the relevant provisions contained in the City’s current General Plan. These provisions include the designation, goals, objectives and policies set forth in the General Plan’s Land Use Chapter and enumerated with in the staff report.
4. Find that the proposed changes amending certain conditions of approval as shown in underline and strike out in Exhibit “1” and replacing Sheet A-1 with Sheet A-111 in Exhibit “E” (Site Plan only) of Planned District P-2009-9, fulfills the applicable requirements set forth in the Fremont Municipal Code.
5. Introduce an ordinance approving a Planned District Major Amendment (PLN2011-00190) to Planned District P-2009-9, as shown on Exhibit “1” findings and conditions of approval and Exhibit “E” (Site Plan only).
6. Authorize the City Manager to execute the agreement to pay for vacated portion of California Street and Street Improvement Project excess costs.
7. Approve “State Street Plaza” as the name of the Civic Park within the project.
8. Authorize the City Manager to execute the Civic Park and Streetscape Installation Maintenance Agreement.
9. Authorize the City Manager to execute the Pedestrian Bridge Easement and Maintenance Agreement.

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS – None.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



***2.3 MANAGEMENT PARTNERS CONTRACT AMENDMENT**

Authorize the City Manager or Designee to Execute a Contract Amendment with Management Partners Related to Personnel Services in the Additional Amount of up to \$40,000 for a Total of \$136,000

Contact Person:

Name:	Christina Brusaca	Jeff Schwob
Title:	Office Specialist II	Interim Director
Dept.:	Public Works	Community Development
Phone:	510-494-4711	510-494-4527
E-Mail:	cbrusaca@fremont.gov	jschwob@fremont.gov

Executive Summary: The purpose of this report is to recommend that Council authorize the City Manager or his designee to amend the City's contract with Management Partners Incorporated for up to an additional \$40,000. Management Partners has provided the City with an Interim Director of Community Development. The City Manager appointed a new Interim Director of Community Development on May 2, 2011. The proposed amendment will allow Management Partners to provide additional management services during a brief transition period.

BACKGROUND: In October 2010, the City entered into an agreement with Management Partners, Incorporated (Consultant) to provide interim management services. Under this agreement, Consultant provided Robert Beyer to act as the Interim Director of the Community Development Department while the City conducted a search for a permanent Director. Originally, the scope of services anticipated these services would be needed for four to six months. However, the recruitment took longer than expected. On May 2, 2011 the City Manager appointed an Interim Director of Community Development from within the City organization. During the recruitment process, the City's Building Official position also became vacant, and Mr. Beyer began serving as interim Building Official, as well as interim Director of Community Development. An amendment is necessary to the Consultant's contract in order to comply with the City's procurement policy, as established by City Council ordinance.

DISCUSSION/ANALYSIS: Through its agreement with the Consultant, the City obtained the services of Mr. Beyer in the roles of Interim Community Development Director (October 2010 to May 2011) and as Interim Building Official (March 2011 – present). If the Council approves this request, Mr. Beyer will continue to assist the Interim Community Development Director with major projects during the transition period, and will also continue to serve as Interim Building Official until a replacement is found. The brief transition, expected to last for approximately another two months, will help with continuity both within the Community Development Department and within its Building and Safety Division.

FISCAL IMPACT: There will be no significant fiscal impact to the City and none to the General Fund. The Building Official position is fully funded in both the adopted fiscal year 2010/11 budget and the proposed budget for fiscal year 2011/12.

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or designee to execute a Contract Amendment with Management Partners for up to an additional amount of \$40,000, for a total of \$136,000.

***2.4 AUTHORIZATION TO PURCHASE BAUER AIR COMPRESSORS**

Authorization to Issue a Purchase Order to Bauer Compressors, Inc., for the Purchase of Two Air Compressors to Replace Outdated and Failing Equipment Currently in Use by the Fire Department

Contact Person:

Name:	Kelly Sessions	Bruce Martin
Title:	Business Manager	Fire Chief
Dept.:	Fire	Fire
Phone:	510-494-4281	510-494-4202
E-Mail:	ksessions@fremont.gov	bmartin@fremont.gov

Executive Summary: Existing Fire Department air compressors used for refilling firefighter breathing tanks have reached the end of their useful life and need to be replaced. Staff has identified a well-built product and best-available pricing by using a competitively-bid contract awarded by the County of Los Angeles to Bauer Compressors, Inc. Staff has also identified a non-General Fund funding source. Staff seeks City Council approval to authorize the City Manager or his designee to enter into a contract with Bauer based on the terms of an existing contract of another public agency to complete this transaction, as well as authority to execute the purchase because the total amount is over \$100,000.

BACKGROUND: The Fire Department currently uses two stationary air compressors to refill the self-contained breathing apparatuses (SCBAs) donned by firefighters when entering potentially hazardous environments. These compressors are beyond their useful service life and are in need of regular repair. Moreover, the manufacturer no longer makes parts for the units, so that one compressor has been cannibalized for replacement parts to service the other.

Staff used a process to identify needs and develop specifications for replacement air compressors. As a result of this process, the Bauer air compressor, model Unicus III/25H-E3, was identified as meeting Fire Department needs. This particular product is very reliable and long-lasting.

A non-General Fund funding source has been identified for the purchase. When the BART Warm Springs extension was being planned, BART agreed to pay for \$134,990 of essential Fire Department equipment to mitigate the impact that an underground tunnel would have on fire rescue operations. Essentially, to maintain readiness, the Department needed a way to increase underground breathing capacity. Because the new high-pressure air compressors will allow for quick recharging of spent SCBAs, BART has agreed to fund the purchase out of its essential equipment funds set aside for Fire Department use.

DISCUSSION/ANALYSIS: In December 2009, the County of Los Angeles, Internal Services Department issued a Request for Bid (RFB) for “breathing air stations” (Solicitation No. RFB-IS-10200531-1). Through this competitively bid-process, the contract was awarded to Bauer Compressors, Inc., effective in June 2010.

Purchasing Code Section 2-9702 allows the City to enter into a contract for the acquisition of goods based upon the term of an existing contract of another public agency if the City Manager determines

three things: (1) the terms of the new contract extended to the City are materially the same as the original public agency contract; (2) the terms of the new contract are more beneficial to the City than it would have been able to obtain if had it followed the normal Request for Proposals (RFP) process; and (3) by entering into the proposed contract, the City will meet the purpose and goals of the City's established purchasing ordinance. These requirements findings were made and are documented in a memo that is on file in Finance.

The City Purchasing Code also requires City Council approval of purchases of personal property that exceed \$100,000. With a total purchase price of \$113,989, City Council approval is required.

FISCAL ANALYSIS: The total bid price of \$113,989 includes freight and sales tax. Funding will come from funds granted by BART to the City to mitigate the impact that the underground tunnel at the Warm Springs BART Station would have on rescue operations. These are non-General Fund monies (199-2223) and must be spent on BART-approved equipment.

ENVIRONMENTAL REVIEW: This procurement is exempt from the requirements of the California Environmental Quality Act (CEQA) under Title 14 of the California Code of Regulations, Section 15061(b)(3), in that this is not a Project which has the potential for causing a significant effect of the environment.

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or designee to issue a purchase order to Bauer Compressors, Inc., in the amount of \$113,989 for the purchase of air compressors by using the County of Los Angeles Contract No. MA-IS-1040425-2.

***2.5 APPROVAL TO AMEND THE STREETLIGHT AND EXTERIOR PUBLIC FACILITIES LIGHT MAINTENANCE CONTRACT WITH REPUBLIC ITS (SIEMENS)**
Authorize the City Manager or Designee to Amend the Streetlight and Exterior Facilities Light Maintenance Contract with Republic ITS (Seimens) for Additional Work in the Amount of \$200,000, for a New Not-to-Exceed Amount of \$836,495

Contact Person:

Name:	Fred Hebener	Frank Morgan
Title:	Streets Supervisor	Deputy Director of Maintenance
Dept.:	Public Works	Public Works
Phone:	510-979-5719	510-979-5701
E-Mail:	fhebener@fremont.gov	fmorgan@fremont.gov

Executive Summary: The purpose of this report is to recommend authorization for the City Manager or designee to amend the City contract for Streetlight and Exterior Public Facilities Light Maintenance with Republic ITS for additional work in the amount of \$200,000, for a new not-to-exceed amount of \$836,495 for the 2010/11 fiscal year.

BACKGROUND: Maintenance of the City's streetlights and public exterior facilities light system is contracted to a private service provider because the City does not have the personnel or equipment to address the scope of the work required. The contractor performs routine preventative maintenance, and responds to emergency repair situations such as streetlight pole knockdowns and vandalism. The work performed by the contractor ensures City street lighting and exterior public facility lighting is maintained in both an operable and a safe condition. The current contractor is Republic ITS, who has provided quality work and responsive service for streetlight and public facility light maintenance to the City since October 2001. The current contract with Republic began on July 1, 2008. The contract had a one-year term, with a not-to-exceed amount of \$576,495, and four one-year options to renew. Last year the contract was amended and increased by \$60,000 due to additional required work. The contract is currently in the second option year.

DISCUSSION/ANALYSIS: Over the course of the last few years, an increasing number of city streetlight pull boxes which house copper wire for street lights have been vandalized. Vandals break into the streetlight pull boxes and steal the copper wire that runs electrical current to the lamp at the top of the streetlight poles. When the Streetlight and Exterior Facilities Light Maintenance Contract was originally created in 2008, the cost for replacing copper wire and related repairs as a result of vandalism was not a significant issue and, therefore, not included in the original contract. Since 2010, streetlight wire theft has dramatically increased as the value of copper has increased and more vandals steal the copper wire and sell it for scrap.

When the stolen wire and damaged streetlights are reported, Republic ITS must come out and repair the lights, which includes replacing the stolen wire, and installing a theft proof pull box. Part of the repair cost includes the installation of a more secure, theft proof "box" for city or vendor access to the wiring, so that this type of theft/vandalism will not be repeated at the same location. Over the past two years, the total cost associated with stolen wire is over \$148,000 and climbing. In FY 2009/10, stolen wire

resulted in over \$62,000 of additional invoices from the vendor, and through May of the current fiscal year, an additional \$86,000 has been billed to the City.

Unforeseen streetlight pole knockdowns and the cost to repair and/or replace the streetlight poles are also contributing to the need to increase the contract. Streetlight pole knockdowns and associated repairs account for approximately \$46,000 so far in FY 2010/11.

In addition to the stolen wire and street light pole knockdowns, there have been several incidents of damage to the streetlights that do not fall under the category of basic maintenance and repairs that is identified in the scope of work in the contract with Republic ITS. Examples of such damage include the following:

- 1) Damaged pull boxes in the sidewalk area which require the repair of the pull box
- 2) Missing pull boxes between street light poles

Costs attributed to non-contract damage were over \$35,000 in FY 2009/10 and over \$6,000 for FY 2010/11 thus far.

Because of the increase in stolen wire costs, the unforeseen number of knockdowns, and the additional non-contract damage, the contract spending authority is reaching its limit before the end of the fiscal year. In addition to the unexpected work, the City pays Republic ITS a fixed amount for routine monthly maintenance and minor repairs, as specified in the original contract. Staff estimates that approximately \$70,000 in routine monthly invoices will be due on this contract before the end of this fiscal year. The current spending authority will not be enough to pay the vendor for the remaining work through the fiscal year, requiring a contract amendment.

The total amount of the request for additional funds includes the cost for invoices received for the stolen wire; non-routine maintenance; streetlight knockdowns; and anticipated but not yet received invoices for stolen wire and non-routine maintenance, as follows:

Additional Cost Breakdown

Stolen wire (actual cost through April 2011)	\$96,000
Non-routine maintenance (actual cost through April 2011)	\$6,000
Light Pole Knockdowns (actual cost through April 2011)	\$46,000
Projected additional cost through fiscal year	<u>\$52,000</u>
Total	\$200,000

In order to continue providing safe and well-lit streets and facilities for Fremont residents, staff recommends authorizing the City Manager to amend the contract with Republic ITS to account for the additional work performed and anticipated for the duration of FY 2010/11.

FISCAL IMPACT: Sufficient funding for the additional streetlight and exterior public facilities services is available in the Maintenance Division's Operating Budget.

ENVIRONMENTAL REVIEW: N/A

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or his designee to execute a contract amendment in the amount of \$200,000 for additional Streetlight and Exterior Public Facilities Lighting services for a new not-to-exceed amount of \$836,495 for the 2010/11 fiscal year.

***2.6 FIRST RESPONDER ADVANCED LIFE SUPPORT SERVICES AGREEMENT**
Authorize the City Manager to Negotiate a Short-term Agreement to Continue the
Provision of First Responder Advanced Life Support Services

Contact Person:

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Executive Summary: Staff recommends that the City Council authorize the City Manager to negotiate and execute a short-term agreement with the County of Alameda for the Fremont Fire Department to continue providing First Responder Advanced Life Support (FRALS) services while the City negotiates a new longer term FRALS agreement.

BACKGROUND: Alameda County is the local Emergency Medical Services (EMS) agency responsible for oversight of all first responder paramedic services and for designating paramedic service providers within the County. In most local jurisdictions, Alameda County relies upon municipalities to provide first responder paramedic service at the scene of any medical emergency. To encourage cities to provide this service, the County provides a subsidy to participating local fire departments that staff a full-time paramedic on each fire company in exchange for the City's commitment to meet response time and service quality standards.

The City first contracted with Alameda County for paramedic services in January 2000. A new agreement was executed in July 2004 for five years and extended in 2009 for an additional two years. That agreement will expire on June 30, 2011. Under the current agreement, the City is compensated based on the number of paramedic units available per day as defined in the Agreement. The City currently has 12 paramedic companies in operation and one company currently "browned out" at Fire Station 11. Under the current FRALS Agreement, Fremont is compensated at a maximum annual rate of \$42,893 for each fully operational paramedic company during the contract period. With 12 operational paramedic companies, the City, therefore, would receive approximately \$42,893 for each month of the contract, which totals approximately \$514,716 per year.

DISCUSSION/ANALYSIS: Alameda County has proposed an entirely new FRALS agreement to replace the soon to expire agreement that greatly increases the County's control over local FRALS programs. When several participating agencies, including Fremont, expressed concerns with the extensive changes in the new agreement, the County expressed a willingness to work through the concerns. The parties, however, realized that this process could not be completed before the current contract expires, and have begun discussing the best way to ensure that FRALS services are provided and the City paid while the terms of the new contract are worked out. Staff requests that the City Council authorize the City Manager or his designee to negotiate this interim solution for the continued provision of FRALS services and to execute an agreement implementing the solution.

FISCAL ANALYSIS: The authority to negotiate requested under this report creates no fiscal impact. However, once an agreeable solution is reached, the City will be in a position to receive approximately \$42,893 for each month that the City provides FRALS services for Alameda County.

ENVIRONMENTAL REVIEW: This report is exempt from Environmental Review.

ENCLOSURE: None.

RECOMMENDATION: Authorize the City Manager or his designee to negotiate an interim solution and to execute an agreement implementing the solution regarding the continued provision of First Responder Advanced Life Support services by the City of Fremont for the County of Alameda.

***2.7 FREMONT LANDSCAPING ASSESSMENT DISTRICT 88**

Public Hearing (Published and Posted Notice) To Conduct A Public Hearing on the Levy of Annual Assessments for Landscaping Assessment District 88 and Adopt a Resolution Confirming Diagrams and Assessments for District 88 for Fiscal Year 2011/12

Contact Person:

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Executive Summary: Staff recommends that the Council conduct a public hearing to levy the annual assessment for Landscaping Assessment District 88. Each year the City levies annual assessments within Landscaping Assessment District 88 for public landscape maintenance. This District presently consists of 47 zones (45 of which are active), which are made up of subdivision tracts that were approved by the City without homeowners' associations to provide maintenance of public landscaped areas in or adjacent to the tracts. The Council began the annual assessment process on April 26, 2011, when it adopted resolutions ordering and approving an Engineer's Report detailing calculations of the annual assessments; declaring intent to levy and collect the assessments; and setting a public hearing on this date.

BACKGROUND: The City Council formed Fremont Landscaping Assessment District 88 in December 1988. This is a Citywide district and allows the creation of landscape maintenance zones as a condition of approval of subdivision maps to ensure ongoing maintenance of public landscaping improvements that are in or adjacent to the subdivisions and that complement their appearance. Each year the City establishes the amount of money needed to maintain the public landscaping for each zone and levies an assessment on each lot in the zone sufficient to pay this amount. Formation of new zones and annexing them into the citywide District 88 is required, as a condition of tract approval, when a developer does not form a homeowner's association to maintain public landscaping. There are no new zones to be formed and annexed into District 88 this year.

Levies of ongoing annual assessments are governed by the Landscaping and Lighting Act of 1972. This Act allows the City to levy and collect assessments for the purpose of funding installation, maintenance, and servicing of public landscaping and lighting improvements. The amount of the assessment levied on each parcel of land is based on the special benefit the parcel receives from the improvements. The County collects the assessment with property taxes and transfers the funds to the City.

In addition to the requirements of the Landscaping and Lighting Act of 1972, the City must comply with the requirements of Proposition 218, which was adopted by the voters in November 1996. Generally, Proposition 218 and its implementing legislation allow property owners to defeat, by majority protest, increases beyond previously established maximum assessments for any zone within the District or the formation of any new assessment district or zone. There are presently 47 zones in District 88, 45 of which are active. On June 24, 1997, the property owners in the District's then existing Zones 1 through 37 (with the exception of Zones 18 and 22) allowed maximum assessments to be levied. In subsequent

years, property owners allowed the formation of Zones 38 through 47 and the levy of maximum assessments for them. These newer zones have been annexed into District 88. Thus, District 88 includes Zones 1 through 17, 19 through 21, and 23 through 47. District 88 does not include former Zones 18 and 22, for which property owners established majority protests in 1997. The maximum assessments for each zone and the amount of the proposed levy for the coming fiscal year, are shown in the Engineer's Report, Exhibit A. All proposed assessments are below the maximum assessment approved on or after June 24, 1997.

DISCUSSION/ANALYSIS:

Hearing for Levy of Annual Assessments for Existing Zones in District 88: In this hearing the City Council must consider public comments regarding the proposed levy of ongoing assessments. Written protests must be accepted up to the conclusion of the hearing. Because assessments are not proposed to be increased beyond the maximums established on or after June 24, 1997, a majority protest cannot defeat the proposed assessment. Notice of this public hearing was given by publication.

Engineer's Report: Each year since the inception of the Landscaping Assessment District, staff has prepared an Engineer's Report and submitted it to the City Council. The City Engineer has prepared the report for fiscal year 2011/12. The Engineer's Report lists for each zone the expected costs (including a reasonable contingency) for the new fiscal year and a carryover cost, which provides sufficient funds to pay the first six months of maintenance cost because assessments are not collected by the County until property tax bills become due. The assessment also includes the City's and the County's administrative costs in imposing the assessment. The total of these cost items is the gross assessment. A credit is then applied to each zone, which consists of the projected zone balance as of the end of the current fiscal year less a reserve fund. The gross assessment less the credit for each zone is divided among its property owners to establish the annual net assessment for each property.

The reserve fund formula is intended to smooth out large increases or decreases in the annual assessments. Use of the reserve fund normally allows decreases in assessments to be limited to 10% and increases limited to 20%. Forty-one zones will be assessed in fiscal year 2011/12. Twenty-five zones will have the same assessments as fiscal year 2010/11, eight zones will have decreased assessments, and eight zones will have increased assessments. Of the eight zones with increased assessments, two zones exceed the 20% goal. In these zones, the reserve fund was not sufficient to offset unanticipated maintenance and water costs. The proposed increased assessments are still lower than the maximum annual assessments approved on or after June 24, 1997. Pages 35 through 37 of the Engineer's Report list the previous and proposed assessments for each zone.

The annual assessments per lot differ considerably among the zones because of differing size and character of landscaped areas and the number of lots in each zone. In previous years, the City Council took special action on Zone 2 (9 lots in Tract 5847), Zone 6 (8 lots in Tract 5950), Zone 12 (9 lots in Tract 5558), and Zone 16 (7 lots in Tract 6121) to allow the homeowners in these zones to take responsibility for the landscape maintenance themselves. Council action was not to assess these zones as long as the homeowners properly maintained the landscaping. The homeowners in these four zones are maintaining the landscaping in a satisfactory manner.

FISCAL IMPACT: All City costs associated with maintaining and administering the District are covered by the annual assessments. There is no impact to the General Fund.

ENVIRONMENTAL REVIEW: None required.

ENCLOSURES:

- [Exhibit A – Engineer’s Report for Fremont Landscaping Assessment District 88, Zones 1 through 47 \(excluding Zones 18 and 22\)](#)
- [Exhibit B – A Draft Resolution of the City Council of the City of Fremont Confirming Diagrams and Assessments for Fiscal Year 2011/12 for Fremont Landscaping Assessment District 88 Zones 1-17, 19-21 and 23-47](#)

RECOMMENDATION:

1. Open public hearing for Levy of Annual Assessment for Existing Zones in District 88.
2. Consider all oral statements and written protests.
3. Close public hearing.
4. Levy the proposed assessment by adopting a resolution confirming Diagrams and Assessments for Fiscal Year 2011/12 for Fremont Landscaping Assessment District 88 Zones 1-17, 19-21 and 23-47 (Exhibit B).

**5.1 SECOND PUBLIC HEARING AND ADOPTION OF FISCAL YEAR 2011/12
OPERATING BUDGET AND APPROPRIATIONS LIMIT**
**Second Public Hearing (Published Notice, Hearing Continued from June 7, 2011) and
Adoption of Fiscal Year 2011/12 Operating Budget and Appropriations Limit**

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Executive Summary: The proposed operating budget identifies total appropriations, including all funds, for Fiscal Year (FY) 2011/12 in the amount of \$243,950,000. The General Fund portion of the total is \$134,095,000. The appropriations limit (also known as the Gann Limit, and which applies only to the General Fund) for FY 2011/12 is \$508,665,119. This report provides an overview of the FY 2011/12 operating budget and describes the methodology for calculating the appropriations limit. The first public hearing on the budget was held on June 7, 2011. Staff recommends that the City Council hold the second public hearing and adopt resolutions approving both the operating budget and the appropriations limit for FY 2011/12.

BACKGROUND: Staff presented the proposed FY 2011/12 operating budget to the City Council during a televised City Council meeting on May 24, 2011. The City Council held a public hearing on the proposed budget on June 7, 2011. The budget identifies total appropriations, including all funds, for FY 2011/12 in the amount of \$243,950,000. The General Fund portion of the total is \$134,095,000. The “Discussion of the FY 2011/12 Operating Budget” section below provides an overview of the FY 2011/12 operating budget.

In addition, staff has calculated the appropriations limit in accordance with Article XIII B of the California State Constitution, commonly referred to as the Gann Limit. Using information on population and per capita personal income growth from the State Department of Finance, as well as information on new non-residential construction assessed valuation from the County of Alameda, the appropriations limit for FY 2011/12 is calculated to be \$508,665,119. Based on the proposed General Fund operating budget of \$134,095,000, the City is not at risk of exceeding the appropriations limit. The “Discussion of the FY 2011/12 Appropriations Limit” section below describes the methodology for calculating the appropriations limit.

DISCUSSION OF THE FY 2011/12 OPERATION BUDGET: The following information is from the Budget Overview section of the proposed budget document. It sets the context for the proposed budget by describing the opportunities and challenges the City will address and the major initiatives underway. It also summarizes the budget strategies proposed for FY 2011/12.

The fiscal year 2011/12 budget process presents a uniquely challenging environment and opportunity for the organization and community. A slow and anemic economic recovery from the Great Recession, coupled with increasing personnel costs, has resulted in a persistent General Fund deficit. The bridging

strategies used to balance the budget the last several years, such as strategic reductions in service levels and the cautious use of reserves, have positioned Fremont better than most cities in the Bay Area. However, given the length of the economic recovery and rising employee costs, these actions have not been enough to address the structural imbalance in the General Fund. The City's need for long-term structural budget change requires a fresh look at the City's cost structures, methods of service delivery, portfolio of services offered and ability to generate revenue. This requires thoughtful deliberation and difficult decisions about the future of City services and the manner by which those services are provided. In spite of these significant challenges, staff has prepared a balanced budget for the City Council's consideration.

Economic Update: The nation seems to finally be emerging from the longest, deepest recession since the Great Depression of the 1930s, although unemployment continues to be an issue. The national economy picked up considerably in the fourth quarter of 2010. The broadest measure of productivity in the United States, gross domestic product, increased at 6.5%, after lagging at about 1% for the first three quarters. Prior to that, gross domestic product had contracted for four consecutive quarters between the third quarter of 2008 and the second quarter of 2009, something that had not occurred since the late 1970s. The most recent strong showing is attributed to a shrinking trade deficit, a sudden resurgence in consumer demand, and a bounce in real estate sales. As it often does, California led the way into this economic abyss, and recovery here may be slower than in other parts of the country. Unemployment continues to be at an all-time high – and significantly higher than the national unemployment rate. The local situation was exacerbated by the closure of the NUMMI automobile plant on April 1, 2010, which resulted in the loss of 4,700 jobs locally, and 15,000 jobs in the region.

California now appears to be headed down the road toward economic recovery, but the trip will be long and difficult. Although there has been a slight increase in jobs, some sectors are still struggling. Not surprisingly, sectors tied to the housing market have been the hardest hit. The real estate, rental and leasing industries all hit new lows in January, and construction has yet to emerge from the doldrums. The retail sector, which has seen some decent growth on the spending side, has so far not been able to translate those gains into a significant number of new jobs. In its most recent economic outlook in April, Beacon Economics is forecasting a steady but prolonged recovery for California's economy.

The State continues to face a budget shortfall that is far too large due to fundamental problems with the State's budget system. Declines in construction and consumer spending continue to thwart the State's attempts to balance its own budget. Although the State is currently seeing increases in revenues, many of these increases are based on temporary solutions to fill gaps over the short term, and most will expire on June 30, 2011 unless an extension is passed. The State Department of Finance estimates that the expiration of the rate increases will result in a loss of about \$3.3 billion in personal income taxes for the State general fund over the next two years, and there will be an even bigger hole to fill in terms of lost sales tax revenue. Some progress has been made on the expenditure side, but so far there has yet to be any consensus in Sacramento on expenditure prioritization. The underlying economy is improving, but that is only half the battle in dealing with California's budget gap. There need to be serious, long-term solutions on both the revenue and the expenditure side if the State is going to dig itself out of its persistent \$20 billion hole.

Impact of State's Financial Condition: The instability of the State budget continues to be a real threat to local governments, including Fremont. The California State Constitution requires the Legislature to

send a budget to the Governor by June 15 and subsequently requires the Governor to sign the budget by July 1. These deadlines may have more meaning this year because Proposition 25, approved in November 2010, prohibits legislators from being paid if they submit a late budget to the Governor.

The Governor's initial FY 2011/12 budget, presented in January 2011, proposed \$26.4 billion in solutions, including providing for a \$1 billion reserve. The proposal included the following:

- The elimination of redevelopment agencies and enterprise zones to save \$1.7 billion and \$924 million, respectively.
- A five-year extension of temporary tax and fee increases approved in 2009; specifically, a 1% increase in sales tax, an increase in the vehicle license fee (VLF) to 1%, and a further increase in the VLF of 0.15% for local public safety programs, as well as an increase in the personal income tax, all of which are due to expire on June 30, 2011. The Governor proposed that these tax extensions be ratified by the State's voters at a special election. However, the opportunity for a June special election was missed when negotiations at the Capitol stopped in late March.
- A broader realignment discussion addressing State services such as fire, court security, community-based corrections, mental health services, foster care and adult protective services to local government (primarily counties).

The Governor issued the May revision of his budget proposal on May 16, 2011, and it is largely unchanged from his January proposal. A number of budget solutions have already been approved, including \$11.2 billion in cuts (about half the deficit), which will become effective on July 1, 2011, regardless of whether the main budget has been adopted. The Governor also signed SB 94, a bill that extends the time frame for the State to notify and collect vehicle registration fees from California vehicle owners. The effect of this is to allow for some additional time to find a funding solution for local law enforcement grants, including COPS program funding, booking fee subventions, and numerous county programs, all of which are funded with the existing temporary increase in VLF, which is set to expire on June 30, 2011.

The Governor's proposal to eliminate redevelopment agencies focused attention on the critical role redevelopment plays as the most effective tool local communities have in creating jobs, improving infrastructure, cleaning up brownfields, building affordable housing and transit-oriented development, and removing blight from neighborhoods. This proposal has been challenged as being unconstitutional under the provisions of Proposition 13, Proposition 22, and the core tax increment protections provided under Article 16, Section 16 of the State Constitution. If the Governor is successful, the City's ability to receive property tax increment of approximately \$35 million annually for affordable housing and infrastructure with regional benefits will be effectively eliminated. The elimination of redevelopment would not only be disastrous locally, but would also have negative impacts statewide, as well. However, the City's General Fund will benefit with the receipt of \$4 to 5 million in additional property tax annually. It is not known at this time how this matter will be resolved.

State constitutional provisions and State laws approved by the voters limit the State's budget flexibility in solving structural deficits. Voters have "locked in" an increasing share of budgeted expenditures without increasing revenues. Such voter-approved funding commitments are often contradictory but, even worse, they reduce the State's flexibility needed to deal with changing budget circumstances. All of these factors, combined with the need for a two-thirds vote in each house of the Legislature to

approve revenue measures, make it especially difficult for the Governor and the Legislature to reach agreement on the State's budget.

How We Got Here: The State of California has a long history of raiding local government coffers to help balance its budget in times of economic downturn and fiscal stress. Fremont experienced a significant budget challenge in the early 1990s when, in response to the severe recession at that time, a significant reduction in property tax revenue occurred. In order to fulfill its funding requirement to schools under Proposition 98, the State permanently took property taxes from local government twice on an ongoing basis to fund its Education Revenue Augmentation Fund (ERAF). These two actions are often referred to as ERAF I and II, and they continue to this day. For the City of Fremont, the amount of this loss has grown to \$14,345,000 annually, for a cumulative property tax loss of \$172.6 million since 1992. Although there have been some modest offsets for this loss from the State, in the form of Proposition 172 and COPS funding, the cumulative loss is still \$153.7 million after taking these offsets into account.

As the organization attempted to deal with these significant and unanticipated revenue losses, difficult budget cuts were made, and negotiations with employees resulted in their starting to pay their own employee contribution to the California Public Employees' Retirement System (CalPERS). Prior to that, Fremont (like most other cities) paid both the employer and employee contributions. Beginning in 1994, all employees began paying their employee contribution, resulting in a 7% budget savings for non-sworn (miscellaneous) employees and a 9% budget savings for sworn public safety employees.

The need for a change in the status quo was also identified. This was at the same time that *Reinventing Government* had just been published, and the time was ripe for looking at different ways to do business and deliver services to the community. Organizational "reinvention" was made all the easier by the beginning of the technology ("dot-com") boom. With its location in Silicon Valley and significant business-to-business sales tax base, economic recovery came roaring back to Fremont in the late 1990s. Sales tax revenues increased at rates few could have imagined. Staff and Council realized this revenue growth rate could not be sustained for the long-term, and efforts were made to not commit one-time revenues to ongoing costs. Instead, the Council formally adopted its reserve policies for the General Fund in 1996, and a significant portion of these increased revenues were also committed to major capital needs, one example being significant street maintenance projects. During this time, some strides were made in reducing the backlog of deferred maintenance, with the result that the City's pavement condition index (PCI) rose to 79 (on a scale of 0-100). (Unfortunately, it has since declined, currently standing at 62.)

Fremont was not the only beneficiary of the growing economy. The State's revenues were likewise increasing by leaps and bounds, and during the late 1990s, revenue growth was predicted to continue. Income tax revenues account for over half of the State's income. During the dot-com boom, these revenues increased dramatically because of income taxes derived from business income and capital gains (most notably, stock options). These two revenue sources are much more volatile than wage and salary income. The top 1% of income earners accounted for just over 30% of State income tax revenues in the early 1990s. This grew to nearly 50% in 2000, at the height of the tech boom.

The CalPERS investment portfolio also grew substantially, resulting in a number of agencies being "super funded" (meaning there were enough plan assets available so that neither employer nor employee

contributions would be required for the remaining life of the plan). It was during this time that many employer rates (including Fremont's) dropped to zero or close to it (although Fremont was never in the "super funded" category).

The effect of the "hot" economy was two-fold. First, it became increasingly difficult to hire and retain good employees. The competition was coming not only from other public sector employers, but from the private sector, which lured job applicants with promises of stock options, compensation packages and perks the public sector couldn't match, and the allure of potential wealth should an initial public offering (IPO) of a start-up company's stock be successful. The City – and all public employers – was in a competition for the best and the brightest, not only with each other, but with the private sector, as well.

The second effect was pressure at the State level on the Legislature and CalPERS to enhance retirement benefits. Employee bargaining groups saw the significant amounts of money available at CalPERS, and they wanted to be able to access those supposed "surpluses" to provide their members with better retirement benefits. The flaw in this perception of "surplus" is that it was based on actuarial assumptions used for the existing benefit level – it was really not "surplus." Undeterred by actuarial reality, the Legislature passed legislation, which the Governor signed, to provide enhanced retirement benefit formulas, subject to negotiation at the local level.

Fremont, like most other cities, faced much pressure from employees to implement these new benefit formulas. This pressure was exacerbated by CalPERS staff telling employees and their bargaining units that these new benefit formulas were "no cost" options. Facing both employee pressure and competitive pressure, the City negotiated with its employee bargaining groups, reaching agreement to enhance the sworn public safety retirement benefit formula from 2% at 50 to 3% at 50 in 2001, and the non-sworn (miscellaneous) retirement benefit formula from 2% at 55 to 2.5% at 55 in 2002. Unlike many other entities, in Fremont, both retirement benefit enhancements provided for some level of cost-sharing by the affected employees (generally in the form of foregone compensation increases). In addition, the employee contribution rate for non-sworn employees increased permanently from 7% of compensation to 8%. The resulting new labor agreements were renewed for an unprecedented seven years. At the time of their ratification, the longer term of these agreements was considered to be an effective way to mitigate exposure to significant future salary increases because they provided for increases at rates below that in the existing market.

Then, in late 2002, the dot-com bust hit. At the time, it was often referred to as "the perfect storm." Sales tax revenues dropped suddenly and significantly, CalPERS employer rates shot up dramatically because of investment losses, and the State once again looked to local government to help balance its budget (through one-time diversions of property tax, amounting to \$10 million for Fremont, often referred to as ERAF III and IV). Once again, in FY 2002/03, the City acted quickly to resolve its budget challenges and evaluate the type and nature of services it delivers.

One thing the City was not able to accomplish during this time was labor concessions because of the existing labor agreements. What had once been viewed as an effective budget management strategy soon became an obstacle to balancing the budget. As a result, other difficult courses of action were pursued, including the elimination of 165 regular positions and 59 temporary positions, the outsourcing of fire dispatch services to a regional fire dispatch consortium, elimination of evening meals at the

Senior Center, a reduction in grants to local non-profit social services groups, the elimination of City-paid extra hours at the Alameda County Fremont Main Library and local branches, reduction of most support for community special events, including funding for the Fremont Symphony Orchestra, closure of the Development Services Center counter half a day per week, and elimination of the City's traffic calming program. Public safety departments took budget reductions of 10% and non-public safety departments reduced their budgets by 20-30%.

It appeared the worst was over and recovery returned in the mid-2000s – that was, until the sub-prime mortgage melt-down began in 2007. In September 2008, with the collapse of Lehman Brothers, Fremont, along with the rest of the country and, in fact, the world, was plunged into the longest, deepest recession since the Great Depression. What had started out looking to economists as a bit of an economic blip – a market correction – became the bursting of the housing bubble. Fremont began ratcheting back spending in 2007, made further cuts in 2008, and in 2009 again significantly reduced the work force, as well as successfully negotiating with employee bargaining groups for wage concessions. In order to balance the FY 2009/10 budget, public safety departments reduced their budgets by 5%, and all other departments reduced their budgets by 10-20%. In addition, 74 regular positions and 29 temporary positions were eliminated. The overall cumulative effect of these position eliminations reduced the authorized staff complement from 1032.35 full-time equivalent (FTE) positions in FY 2002/03 to the current level of 848.485 FTE positions in FY 2011/12, an 18% reduction.

City services are provided by employees, and financial instability impacts City staff. These severe reductions in FY 2002/03 and again in FY 2009/10 created critical public safety and maintenance issues and have hampered the organization's ability to provide optimal administrative support to frontline operations. Although these actions were necessary to help balance the budget, staffing levels for the most basic services – public safety and maintenance – are at their lowest level in almost 20 years when viewed in relation to Fremont's population. The total City workforce now consists of 3.9 FTEs per 1,000 residents, one of the lowest staffing levels in Alameda County.

FY 2011/12 Fiscal Outlook: Now, as the City looks ahead to FY 2011/12, staff is encouraged by indicators that the worst may be over economically. Economists are no longer talking about the possibility of a “double dip” recession – although they generally agree that the recovery will be a long, slow one. Typically, local government revenues lag both economic downturn and economic recovery over the course of the business cycle. This gap between the change in economic conditions and local agency revenue collections can last from 18 months to several years. The Joint Venture Silicon Valley (JVSV) 2011 Index of Silicon Valley indicates local government recovery from the current recession will likely experience an even greater lag than has been the case over the course of previous recessions. In addition to the high unemployment rate, it will take some time for the housing market to recover. Further, the blow to the financial markets has resulted in lost value in public retirement funds, which now have fewer resources to meet growing obligations. This results in increased employer contributions into the retirement funds to meet those obligations.

Property tax appears to be stable, and sales tax seems to be ticking up a bit, just as staff anticipated when the FY 2010/11 budget was adopted. What was not fully anticipated at that time was the significant CalPERS rate increases looming in FY 2011/12 and beyond. These increases are the result of substantial investment portfolio losses at CalPERS, and a change in demographic assumptions to reflect retirees generally living longer (and, thus, collecting benefits for a longer period). Because CalPERS

“smoothes” investment portfolio gains and losses over 15 years, the current high rates will likely reach a peak over the next 3-5 years or so and then level off at that high rate for the foreseeable future. (This practice of smoothing over such an extended period of time was implemented at the behest of local agencies when they were reeling from significant rate spikes in FY 2002/03. At that time, local agencies requested more predictability and less volatility in employer rates, and the CalPERS Board agreed to make that change.) Implementing a second tier retirement benefit for new employees will help mitigate the impacts of these high employer rates over the long term.

The City met previous difficult times by reducing spending throughout the organization and by focusing on attracting and retaining retail businesses to increase revenue. Staff has been vigilant and disciplined over the past several years, cutting costs and reducing staffing to a point of marginal service delivery. A dollar saved today is one that won’t have to be cut in the future, and the organization has taken that to heart. Even so, some very difficult cuts and service reductions have been necessary to make sure the City continues to live within its means.

Total budgeted resources in the coming fiscal year will be adequate to support total budgeted expenditures of \$134.1 million, so the budget is considered to be balanced. The FY 2011/12 budget also maintains the City Council’s long-standing funding priorities by allocating over three-quarters of the budget to direct costs for public safety and maintenance. The share of General Fund resources budgeted for these purposes is actually 90% when overhead costs required to support these functions are allocated. The FY 2011/12 budget is 0.4% less than last year’s adopted budget.

Property tax and sales tax are the City’s most significant revenue sources. The City’s FY 2011/12 property tax revenues are based on assessed property values as of January 1, 2011. Although property transfer tax from real estate transactions is beginning to grow again, the increase is primarily attributable to more transactions occurring. The average amount per property transaction is just now beginning to show a slight increase, after falling for the past two years as a result of the bursting of the housing bubble at the start of the recession. A negative factor for property tax is the preliminary impact of the NUMMI plant closure and subsequent sale, which will be reflected on the property tax rolls in FY 2011/12. The County Assessor is currently estimating roughly a 40% reduction in the assessed value for that particular property. The final determination of the new assessed value will likely not be made for at least a year because of the complexity of the transaction. On the positive side, the inflationary adjustment to assessed values permitted by Proposition 13 is 0.753% for FY 2011/12. This is a vast improvement compared to the negative 0.27% last year, and is one more indicator that the worst may be behind us. Based on all these factors, property tax revenues are projected to increase in FY 2011/12 by 1.5%, to \$62.8 million.

In contrast to the generally consistent property tax trend, sales tax trends are emblematic of the City’s broader revenue volatility. After reaching a high point of \$33.2 million in FY 2000/01, sales tax revenues endured a multi-year decline to a low point of \$26.8 million in FY 2003/04. The steep drop was caused by the collapse of the Silicon Valley technology market and Fremont’s reliance on sales tax from high-tech manufacturers. Since that time, sales tax from the high-tech and biotech sectors now appears to be stabilizing, and City efforts to diversify and strengthen our sales tax base by increasing the consumer retail sales and auto sales tax bases have also been productive.

As a result, staff expects to see an 11.6% increase in sales tax revenue in FY 2010/11, followed by a 4.9% increase in FY 2011/12, to \$31.3 million. The wide swings in sales tax are attributable to the “triple flip” portion of our sales tax. In FY 2009/10, the State determined that all cities had received more “triple flip” property tax replacement in the past than they should have, and this overpayment was corrected in FY 2009/10. As a result, the FY 2010/11 sales tax increase is overstated. When the “triple flip” portion is omitted from total sales tax, actual sales tax revenue is expected to increase by 6.3% in FY 2010/11, and by 5.5% in FY 2011/12.

In FY 2010/11, the City is expecting to use \$3.5 million from the Budget Uncertainty Reserve (down from the \$7.8 million anticipated at the time the FY 2010/11 budget was adopted in June 2010). Besides the beginning of recovery in revenues, primarily sales tax, a key reason for this decreased use of the Budget Uncertainty Reserve is a lower actual debt service requirement for the City’s variable rate debt than the amount that was originally budgeted in accordance with the debt covenants. Because this favorable experience has occurred for the past few years due to unusually low interest rates, the FY 2011/12 budget now includes a savings assumption with respect to the City’s variable rate debt. In FY 2011/12, \$2.8 million of the Budget Uncertainty Reserve is recommended for use to balance the budget, leaving a remaining balance in this reserve of \$4.6 million.

Key Budget Assumptions: Based on all the data available at this time and economic forecasts from a range of sources, staff is making the following key assumptions for the FY 2011/12 budget:

1. Because of the long, slow nature of this economic recovery, a combination of sustainable budget reductions and use of a portion of the Budget Uncertainty Reserve is proposed, resulting in a budget that is only 1.9% more than estimated actual expenditures the year before. When compared to the FY 2010/11 adopted budget, there is actually an expenditure decrease of 0.4%.
2. The local economy will generally hold steady and improve slightly during FY 2011/12, resulting in total General Fund resources (revenues and transfers in) increasing by 2.5% over estimated actual resources in FY 2010/11. This is in contrast to the more typical growth experienced in prior years of at least 4%.
3. The FY 2011/12 proposed budget includes a “placeholder” for employee compensation reductions and alternative service delivery savings of \$5.2 million. Those reductions and savings have yet to be specifically identified; discussions with all of the City’s employee bargaining units are currently underway but have not yet been completed.
4. Even with the savings “placeholder,” the costs of the FY 2011/12 budget will exceed projected resources, requiring the use of \$2.8 million of the City’s Budget Uncertainty Reserve to balance the budget.
5. Notwithstanding Proposition 22, which was passed by the voters in November 2010 and curtails the State’s ability to dip into local coffers to balance its budget, the unresolved State budget situation continues to be a threat, which means that this budget may be considered “provisional” in nature, and additional modifications may perhaps be needed during FY 2011/12.

6. Total expenditures in the FY 2011/12 budget include a savings assumption of \$1.1 million (approximately 1% of total budgeted expenditures in FY 2011/12) to compensate for the historical tendency to under-spend total allocated resources because of things like salary savings from vacant positions. In addition, there is also a savings assumption of \$1.5 million to offset the additional appropriations required with respect to the City's variable rate debt, in accordance with debt covenants.
7. The FY 2011/12 budget does not include any prefunding of the City's other post-employment benefit (OPEB) liabilities, nor does it include any contribution to capital projects. Funding for these items will not be included in the budget until such time as the economic situation has stabilized and sufficient resources are once again available.
8. The General Fund's primary reserves, which total 12.5% of total expenditures and transfers out, will remain intact for FY 2011/12. However, \$2.8 million from the Budget Uncertainty Reserve will be spent.

Operational Impacts and Challenges: Services currently performed by the City, the manner in which they are performed, and the methods used to compensate employees for that work are a reflection of past practices. These practices evolved from a combination of the more positive fiscal environment in which they were adopted, past competitive labor markets and different economic assumptions. While these practices were appropriate in the context of the time in which they were adopted, negotiated or approved, they are no longer aligned to the current fiscal environment. Given the projected General Fund deficit for next fiscal year, the multiple years of budget contraction, the previous utilization of reserves, and rising personnel costs, the City needs to implement long-term fixes to the budget.

Budget Development Strategies: Major budget development strategies for solving the deficit can be grouped into four main categories:

- Reduction in overall employee compensation expenses;
- Transition to alternative service delivery models;
- Reduction or elimination of services to the community; and,
- Revenue enhancements.

Each of these categories is discussed below in a summary fashion. The objective of these summaries is to introduce and provide context to the concepts or approaches.

Reduction in Overall Employee Compensation Expenses: Although employees have not received salary increases for two fiscal years, the City has incurred increased personnel expenses in the form of increases in employer-funded health care benefits (the HBA allowance) and the employer-funded portion of retirement contributions. The current fiscal environment requires the City to look at the total cost of employee compensation. Examples of this strategy include the following (in no particular order):

- Reducing salaries on a one-time and/or on-going basis;
- Increasing employee contributions toward retirement;
- Increasing employee contributions to health care benefits;
- Initiating employee wellness incentives;

- Optimizing job functions;
- Re-evaluating deployment or work schedules;
- Changing MOU provisions that increase the cost of service delivery, such as overtime payments that exceed FLSA requirements; and,
- Introducing lower cost pension and healthcare plans for new employees.

Transition to Alternative Service Delivery Models: Looking at how employees currently perform their work will be necessary as options are assessed. To this end, the City has engaged an experienced, public sector-focused management consultant to assist staff in conducting a strategic sustainability study, taking a targeted look at City operations. The goal is to evaluate how key services are currently delivered, compare Fremont's operations to other municipal best practices, and recommend less costly alternatives to the City's current models. Topical areas of focus for this strategic sustainability study include the following:

- Examining key services that may be better provided through a contractual relationship with a private sector vendor, non-profit organization or other local jurisdiction;
- Exploring shared-service models and/or consolidating services with other cities or the county;
- Reviewing opportunities for internal consolidations and efficiencies;
- Looking at employee work schedules to achieve an optimum deployment of City staff; and,
- Considering whether some work currently performed by sworn staff could be performed by non-sworn staff.

Reduction or Elimination of Services to the Community: The number and types of services the City provides also need to be examined. To the degree that the two preceding strategies of reducing total compensation and finding alternative service delivery models cannot address the budget gap, this particular strategy will become more important.

Since FY 2002/03, the City has been reducing expenditures and downsizing the organization to keep pace with the reduction in revenues, primarily due to the Silicon Valley business slump and then the Great Recession. In doing so, we have tried to preserve, as best we could, police, fire, and maintenance services, which together account for 90% of General Fund expenditures. The City has made major changes to operations, closed or browned-out fire stations, closed the fire dispatch center and moved to a regional center, reduced police special units and focused on patrol and investigations, reduced crime lab operations, stopped funding extra library hours, eliminated approximately 300 positions, furloughed employees, and generally cut back across the board.

The organization is already lean and has one of the lowest employee per 1,000 residents staffing ratios in the Bay Area. As a result, a simple cookie-cutter percentage reduction to services will not be effective. Instead, Council will need to consider program and service elimination.

The average cost of employees has continued to grow. The chart below shows the average cost per employee, separated into public safety, miscellaneous, and a combined average.

Average Cost of City Employees				
	2007	2008	2009	2010
Public Safety	\$134,477	\$144,797	\$149,647	\$160,427
Miscellaneous	104,567	110,692	109,211	116,488
All Employees	115,593	123,555	124,244	<u>133,210</u>

The FY 2011/12 projected deficit of \$8.0 million equates to over 60 positions that would need to be eliminated to balance the budget through the implementation of this strategy alone, using the 2010 combined average cost of all City employees.

$$\frac{\$8.0 \text{ Million FY 2011/12 Deficit}}{\text{Average Cost of All Employees of } \$133,210} = 60 \text{ FTE}$$

It is staff's recommendation to not pursue this option unless a structural gap remains after the first two options have been exhausted.

Revenue Enhancements: A final, but important, strategy to consider is looking for opportunities to enhance revenue generation for the City. Although many of these options may not be achievable by the time of budget adoption, they may be worthy of consideration given the current fiscal environment. These options could include continuing aggressive economic development efforts currently underway, implementing full cost recovery for more programs, increasing rates for City facilities to be closer to market rates, and evaluating the existing fee and tax structures for relative competitiveness to other Bay Area large cities. Any consideration of revenue enhancements, such as a new tax, would likely require both prior action on the three preceding strategies and significant public outreach to prepare for the applicable ballot initiatives.

Strategic Sustainability: There is a budget "placeholder" of \$5.2 million in budget balancing strategies that have not yet been identified, but are the subject of negotiations currently underway with all employee bargaining units. The goal is to identify and implement these strategies by July 1, 2011. Some of these items may take a toll on the organization and our ability to provide services internally and to the community. However, they will also result in a balanced budget for FY 2011/12 and into the future.

Even as the organization struggles to provide services to the community, the City faces another challenge in the increasing cost of maintaining Fremont's infrastructure. This is primarily due to three factors. First, as Fremont ages, so does its public infrastructure. The majority of Fremont's public infrastructure was constructed many years ago and now requires either an increased level or frequency of repairs, compounded by not having had adequate resources to spend on street maintenance in the past. Second, as Fremont continues to grow, additional infrastructure is added that must be maintained, further stretching the City's limited maintenance resources. Finally, new requirements result in increased costs. Some of these requirements are voluntary, such as the City's continued move toward greater sustainability. Although sustainability programs such as improved energy efficiency will eventually save money and reduce greenhouse gas emissions, in the near term there are increased

transitional costs. Other maintenance requirements, which are regulatory in nature, have increased dramatically over the last few years, and have added significant costs to City operations.

Major City Initiatives: Although the City's current economic climate is sobering, affecting the breadth and depth of services offered to the community, there are many important initiatives currently underway. These initiatives are important investments in the community's future and position the City well for long-term growth and stability. Notwithstanding the impacts of budget reductions, City staff must continue to proactively move these important initiatives forward.

Development: There are a number of significant development projects and initiatives underway. These are all important elements of our sales tax diversification strategy.

South Fremont/Warm Springs Area: The 2010 closure of the automobile plant formerly operated by NUMMI both presents challenges and creates opportunities. In order to develop a strategy for this site and surrounding areas, the City applied for and received a \$333,000 grant from the United States Economic Development Administration (EDA) in April 2010. These grant funds are being used to complete a series of four studies to develop a strategic plan for the reuse and revitalization of the Warm Springs/South Fremont area of over 850 acres that surrounds the future Warm Springs BART station and includes the automobile plant.

In May 2010, the 5.5 million square foot plant was purchased by Tesla Motors (the site is now known as the Tesla Factory) and they are expected to begin manufacturing the Model S Sedan in early 2012. In addition, over 170 acres of vacant land surrounding the plant has been purchased by Union Pacific Railroad to expand freight rail service. The purchase of these parcels has necessitated a change in the study scope, as the City adjusts land use alternatives to reflect the new ownership and determine how best to strategically develop this area.

In addition to these studies, the City has applied for a Priority Development Area designation from the Association of Bay Area Governments. The strategic location of this area with convenient Interstate freeway access, rail access, and public transit (via the future Warm Springs BART station and bus service) presents an unparalleled opportunity for economic development and new jobs in the Bay Area. The studies are expected to be complete in late 2011, and the results will be integrated into a Specific or Community Plan, as well as the new General Plan.

Downtown/Capitol Avenue: The Downtown/Capitol Avenue project is a "Main Street" style pedestrian-oriented mixed-use development focused in the area bounded by Fremont Boulevard, Mowry Avenue, Paseo Padre Parkway, and Walnut Avenue. Staff is currently working with TMG Partners on the development of a Community Plan and Design Guidelines for this downtown district, and associated environmental review is underway. When completed in the fall of 2011, these documents will provide the necessary certainty for developers as to the type of project that can be developed and will help expedite the approval process, saving both time and money. Currently, a financial and fiscal analysis is underway and implementation strategies will be developed so that the vision of this project can be brought to fruition.

Retail Centers: Pacific Commons is an 880,000 square-foot regional power center located at I-880 and Auto Mall Parkway. This past year the center has seen significant investment and plans for expansion,

as both Nordstrom Rack and Toys R Us/Babies R Us have leased long-vacant, large spaces. In addition to increased occupancy, construction is about to begin on over 300,000 square feet of new space that includes a new Target store and a new 16-screen Century movie theater. These will both anchor a new phase of Pacific Commons known as “the Block.” This new phase has been approved and the City will work closely with the developer to secure tenants to speed construction of this new pedestrian and entertainment focused section of the center.

Emerging Technology: Fremont’s emerging “clean and green” technology cluster continues to expand, most notably with the completion of the 300,000 square foot Solyndra manufacturing plant. Other solar and clean technology firms have been leasing space in Fremont and planning expansions, including Solaria and Intematix. Staff is actively marketing Fremont as a clean tech “hub.” Fremont’s biotech and medical device industry cluster remains stable, with firms continuing to make investments in their facilities. Staff seeks opportunities and continues to meet with potential businesses and market local sites. The establishment of these various technology clusters promotes business-to-business opportunities, helping employment and the City’s sales tax revenues.

Local Business Stimulus Package: In March 2009, the City created a Local Business Stimulus Package designed to help existing Fremont businesses and provide incentives to attract new businesses to Fremont during these difficult economic times. This program has been widely marketed and has yielded positive results. The Fremont Local Business Stimulus Package was recognized in April 2011 by the California Association for Local Economic Development (CALED) as the Grand Prize Winner for Economic Development Programs. The results of the 2009 Local Business Stimulus Package include the following:

- **Fee Reduction:** The City has reduced \$945,000 (\$339,000 of which is pending) worth of impact fees. Building permits for the urban housing development in the Central Business District will be issued in a few months. Total impact fees for this development are estimated to be around \$8 million; however, with a 50% reduction, the developer will end up paying approximately \$4 million and the City will forego the remaining \$4 million. Thirty-eight businesses have taken advantage of the fee reduction program.
- **Fee Deferral:** The City has deferred approximately \$8.3 million in impact fees for nine residential developments, three businesses, and two single family residences. The residential development community has shared with staff that the fee deferral program has been the most beneficial due to the fact that it reduces upfront costs needed to start a project.
- **Clean Technology Tax Exemption:** Six clean technology firms have participated in the tax exemption program, including Solyndra, Solaria, Renewable Energy Test Center (RETC), Greenvolts, Sierra Solar Power and Intematix. Total revenue loss is estimated to be \$32,000. However, the City has benefitted from increased sales tax revenues, decreased vacancy rates, and increased employment.
- **Local Business Purchasing Preference:** The local business purchasing preference program has had minimal participation, but also has minimal cost to the City. This program increased the local business purchasing preference to 5%. Out of 44 bids, four included Fremont businesses, and two were awarded to local vendors. One vendor was awarded the bid due to the purchasing preference,

the other was already the lowest bidder and the preference was not a factor. The net cost to the City has been just over \$1,200. This program ended in December 2010 and the local business purchasing preference has reverted to 2.5%.

General Plan Update: State law requires cities to adopt a comprehensive General Plan, which serves as the “constitution” for all future development decisions in the community. In FY 2007/08, the City began working on an update to its General Plan, which was last comprehensively rewritten in 1991. As part of that effort, staff sought extensive community input, completed several technical studies, and held a series of study sessions with the City Council and the Planning Commission on land use policy issues. In FY 2010/11, the City issued the draft General Plan and an accompanying user-friendly “Vision Book” that together lay the groundwork for achieving the community’s shared vision. Staff also held several community workshops to publicize the draft Plan, and began the Environmental Impact Report (EIR). Based on community input and the results of the EIR, staff will revise the draft Plan as necessary for final adoption by the City Council in FY 2011/12.

Redevelopment: Several exciting redevelopment projects are underway. All of these projects will help revitalize the Redevelopment Project Areas and bring new revenue into Fremont. Although the Governor has proposed the elimination of redevelopment as a State budget balancing strategy, that effort has so far been unsuccessful. Whether it will ultimately occur with the adoption of the State’s FY 2011/12 budget is unknown at this time. In the meantime, staff is continuing to work on redevelopment projects to accomplish as much as possible in advance of any actions the State might take.

Centerville: One of the largest projects underway in the Centerville district is the anticipated development of the Agency-owned Centerville Unified Site, located on a 6.6-acre site along Fremont Boulevard near Thornton Avenue. The Agency has selected a developer for the site, is negotiating a disposition and development agreement, and anticipates commencing the entitlement process for a new development. This development is proposed to be a public/private partnership between the selected developer and the Redevelopment Agency, focused on creating a mix of uses and featuring public gathering space and architectural design consistent with the character of Centerville.

Irvington: The Grimmer Greenbelt Gateway project will create a meandering landscaped pedestrian and bicycle path from Fremont Boulevard across Paseo Padre Parkway to Central Park. A portion of this project is complete, and development of the preliminary design and cost estimates for the next phase will occur in FY 2011/12.

The most significant and highest profile project slated for the Irvington district is the construction of the Irvington BART Station. The 2010 Plan Amendment guarantees the Agency will have sufficient revenue to fund debt service on a tax allocation bond (TAB) issue, which the Agency has been planning on for years to fund the capital improvements. During FY 2011/12, the Agency plans to conclude negotiations with BART, complete the bond issuance, and commence design work.

Niles: The environmental remediation of the former Union Pacific rail yard is now substantially complete, but the consideration of any future use for the site is on hold pending improvements in the local real estate market. Instead, the Agency is continuing its efforts in Niles to improve the existing infrastructure. This will include the reconstruction of H Street between Niles Boulevard and Second Street, as well as improvements to the alleyway serving the commercial district. The Agency is also

considering improvements to the entrance to the Niles District, including pedestrian safety improvements to the Sullivan Underpass, in an effort to mitigate the negative effects of Niles' geographical isolation from the rest of Fremont and the surrounding area.

Capital Projects: Despite the challenges in the City's General Fund, we continue to work on a variety of major capital projects. These projects can proceed because, for the most part, they do not rely on the City's General Fund. Rather, their funding comes from such sources as redevelopment tax increment, traffic impact fees, State and regional sources, and the Fire Safety Bond (Measure R) approved by Fremont voters in 2002.

Pavement Overlay Project: This summer, the City will use \$3.14 million of Federal Surface Transportation Program/Congestion Mitigation and Air Quality Improvement (STP/CMAQ) funds to rehabilitate 1) Paseo Padre Parkway between Mowry Avenue and Stevenson Boulevard, and 2) Mission Boulevard between Pine Street and South Grimmer Boulevard, for a total length of 2.0 road miles.

Niles Boulevard Reconstruction: Next year, the City will rehabilitate Niles Boulevard between the Sullivan Underpass and Hillview Drive. This \$3.4 million project will be funded through State Gas Tax, Measure B, Proposition 42 and Redevelopment funds. This project is expected to start in spring 2012 and be completed by fall 2012.

Sabercat Creek Restoration: In June 2008, the City was awarded a \$1.17 million grant from the State of California River Parkways Grant program, which will provide the majority of the capital funding needed for this \$1.85 million creek restoration project. The remaining funding for this project will come from the Urban Runoff Program and a contribution from the Alameda County Flood Control & Water Conservation District (ACFC & WCD). This will improve public access and enjoyment of this park, restore the creek and surrounding riparian habitat and improve water quality. Construction of this project will commence in summer 2011 and be completed by the end of the fiscal year.

Niles Bridge Replacement: The \$12 million Niles Bridge Replacement Project will be mainly funded through \$10 million of Federal Highway Bridge Rehabilitation and Replacement (HBRR) funds. Other sources of funding will include Proposition 1B and State Gas Tax. This project is expected to start late in 2011 and be completed by the end of 2012.

Downtown/Capitol Avenue Catalyst Project: The City received a \$1.6 million Transportation for Livable Communities (TLC) grant to construct streetscape improvements in the block bounded by Walnut Avenue, Liberty Street, Beacon Street and (planned) State Street. The first phase of this project is scheduled to start this summer.

Intersection Improvements and Infrastructure Upgrade: In FY 2011/12, the City will modify three major intersections (Blacow/Central, Fremont/Walnut and Mowry/State) to improve traffic safety and traffic flow at a total cost of \$2.1 million, funded through Traffic Impact Fees.

Bicycle and Pedestrian Capital Projects: In FY 2011/12, the City will start construction on four major bicycle and pedestrian projects. Three of the projects are near schools (two near Ardenwood Elementary School and one near Leitch Elementary School), and one is near the Hub Shopping Center.

The total cost of the projects is about \$1.8 million, funded through Measure B Bicycle and Pedestrian funds and various grants.

Fire Safety Bond Projects: In November 2002, Fremont voters approved Measure R by 74.4%, thereby authorizing the City to issue \$51 million in general obligation bonds, to be repaid by a property tax levy. Proceeds from these bonds are to be used to replace three fire stations, build public safety training facilities, and make remodeling and seismic improvements to seven existing fire stations. To date, all \$51 million in bonds has been issued, and new Station 8 in North Fremont, Station 6 in Centerville, and Station 2 in Niles have been completed.

Of the stations being remodeled, six are complete (Station 1 in the Central Business District, Station 4 at Pine Street and Paseo Padre Parkway, Station 5 in Warm Springs, Station 7 at Grimmer Boulevard and Auto Mall Parkway, Station 9 at Stevenson Place, and Station 10 in Ardenwood). The remodel of Station 3 in Irvington, which is the last fire station project, began construction in June 2010 and is expected to be completed this summer. The separate public safety training facilities consist of a Police firing range and training room, Fire training classrooms, and a Fire tactical training facility. The Fire training classrooms, which were part of the Building “A” Fire Administration project (funded with non-fire bond money), were completed in April 2009. The Fire tactical training facility began construction in May 2009 and was completed in June 2010. The Police firing range began construction in April 2009 and was completed in November 2010.

Community Services: Several projects are underway or about to begin that enhance the lives of our citizens, increase safety and park usability, and reduce maintenance costs.

Playgrounds: The final phase of a multi-year effort to bring City playgrounds into compliance with current playground safety standards and minimize maintenance will be completed. Seven City play areas and three Tiny Tot play areas will be upgraded. The sand or fibar surfaces of these playgrounds will be replaced with poured-in-place recycled rubber, which is projected to reduce the collective number of hours necessary to maintain these playgrounds by 730.

Sports Fields: Design and conversion of Nordvik and Centerville Park’s Softball Fields to all-weather turf will be completed. This will reduce maintenance costs and quadruple field availability. Nordvik will be able to accommodate a full-size soccer field and is anticipated to be almost 100% booked in prime-time by the end of the first year of operation.

Patterson House: Renovation of the historic Patterson House will be completed with foundation repairs, electrical wiring upgrades, and new heating/air conditioning systems in order to preserve one of Fremont’s treasured assets while making it safe and comfortable for public use. Much of this work will be funded with proceeds from East Bay Regional Park District’s Measure WW, approved by voters in November 2008.

Conclusion: Fremont has long prided itself on being a lean organization, making the most of the resources entrusted to the City. The prolonged recession has forced the organization to make hard choices about which services will be provided to the community, and how they will be provided. Fiscal discipline and wise stewardship over many years have made it possible for Council and staff to take a balanced approach as the organization strategically resets its service levels.

DISCUSSION OF FY 2011/12 EXPENDITURE LIMIT: Article XIII B of the California Constitution (enacted with the passage of Proposition 4 in 1979 and implemented by SB352, Chapter 1205 of the 1980 statutes, with modifications under Proposition 111, passed in June 1990 and implemented by SB88, Chapter 80 of the 1990 statutes) provides the basis for the Gann appropriation limitation. In brief, the City's appropriations growth rate is limited to changes in population and either the change in California per capita income or the change in the local assessed property roll due to new, non-residential construction.

The formula to be used in calculating the growth rate is as follows:

$$\begin{array}{c} \frac{\% \text{ change in population} + 100}{100} \\ \text{times} \\ \text{either} \\ \frac{\% \text{ change in per capita income} + 100}{100} \\ \text{or} \\ \frac{\% \text{ change in non-residential assessed value} + 100}{100} \end{array}$$

The resulting rate times the previous appropriation limit equals the new appropriation limit.

Both the California per capita personal income price factor and the population percentage change factors are provided by the State Department of Finance to local jurisdictions each year. Population percentage change factors estimate changes in the City's population between January of the previous fiscal year and January of the current fiscal year. Reports that present changes in new non-residential assessed value are provided by the County of Alameda. These numbers provide the basis for the factor to be used in the City's calculation of the Gann Limit. Of the two methods above, the City is using the "per capita personal income" factor because it results in the higher appropriations limit.

On May 1, 2011, the State Department of Finance notified each city of the population changes and the per capita personal income factor to be used in determining appropriation limits. The calculation as applied to the City of Fremont for 2011/12 is as follows:

The population on January 1, 2010 (213,659) compared to the population on January 1, 2011 (215,711), is 2,052, representing a 0.96% increase.

The change in per capita personal income is 2.51%.

The factor for determining the year-to-year increase is computed as follows:

$$\frac{0.96 + 100}{100} \times \frac{2.51 + 100}{100} = 1.0349$$

Applying this year's factor of 1.0349 to last year's limit of \$491,511,372, the Gann Limit for FY 2011/12 yields \$508,665,119. Based on an operating budget of \$134,095,000, Fremont is not at risk of exceeding the Gann Limit.

ENCLOSURES: [Resolutions \(2\)](#)

RECOMMENDATION:

1. Hold a public hearing on the operating budget and appropriations limit for FY 2011/12.
2. Adopt a resolution approving the City of Fremont Operating Budget for FY 2011/12.
3. Adopt a resolution creating an appropriations limit of \$508,665,119 for FY 2011/12.

5.2 SECOND PUBLIC HEARING (PUBLISHED NOTICE) ON FISCAL YEAR 2011/12 – 2015/16 CAPITAL IMPROVEMENT PROGRAM

Second Public Hearing and Consideration of Adoption of the FY 2011/2012 - 2015/2016 Capital Improvement Program (CIP)

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Executive Summary: The development of the FY2011/12 – 2015/16 CIP began in the summer of 2010. The City Council has thus far held three meetings to review the results of the process that created the list of projects proposed for funding during the five-year period of this plan. On June 7, 2011, the City Council held the first public hearing, reviewed the projects and funding schedule, and received comments on the proposed plan. The purpose of this item is to review any changes since June 7, 2011; hold the second public hearing; and adopt the FY 2011/12 – 2015/16 CIP.

BACKGROUND/DISCUSSION: The CIP development process involves a comprehensive internal project planning effort, and multiple opportunities for the City Council to review the progress of the CIP development and to provide direction to staff. At the January 11, 2011 City Council meeting, staff presented an overview of the CIP process, initial capital revenue projections, and recommendations of specific projects to proceed in the CIP process and receive further costing and scoping. Staff also provided a status report for all ongoing City capital projects (PWCs). Following the January 11, 2011 meeting, staff refined revenue projections, project costs estimates and project funding level recommendations. At the April 5, 2011 meeting, the City Council received the final project listing, along with the funding timeline for each project. On May 26, 2011, the Planning Commission reviewed the CIP for the purpose of evaluating and ensuring project compliance with the General Plan, as required by State law. On June 7, 2011, the first of two public hearings was held for comment on the FY 2011/12 – 2015/16 CIP.

FISCAL IMPACT: The proposed Capital Improvement Program for FY 2011/12 – 2015/16 programs over \$239.5 million in projects over the five year life of the plan. Approximately \$55.2 million and \$51.8 million will be appropriated in FY 2011/12 and FY 2012/13, respectively, before the CIP will be revisited for FY 2013/14 – 2017/18. Of the \$239.5 million in projects, \$135.9 of the total projects are funded by the Redevelopment Agency, the future of which will be contingent on the continuation of local redevelopment agencies.

ENVIRONMENTAL REVIEW: The adoption of the Capital Improvement Program itself is not an action subject to the California Environmental Quality Act (CEQA). There will be subsequent environmental analysis upon further development of the various projects.

ENCLOSURES:

- [Draft Resolution](#)
- [Replacement pages for CIP binder issued for the June 7, 2011 City Council meeting](#)

RECOMMENDATIONS:

1. Hold a public hearing on the five-year FY 2011/12 – 2015/16 Capital Improvement Program (CIP).
2. Adopt a resolution approving the FY 2011/12 – 2015/16 CIP, including the appropriation of the proposed funding amounts from the funding sources shown in the Fund Source and Use report for all five fiscal years, with appropriations for FY 2011/12 to be made effective July 1, 2011 and appropriations for FY 2012/13 to be made effective July 1, 2012.
3. Approve (reaffirm) the long-term capital debt policy as included in the FY 2011/12 – 2015/16 CIP.
4. Authorize the City Manager to adjust the timing of appropriations approved by the City Council. (This allows accelerating or deferring the timing of these funds in response to changed conditions, but does not change the total appropriations for any project.)
5. Authorize the City Manager to transfer appropriations up to \$50,000 per project from the Capital Improvement Program Cost and Scope Contingency (PWC 8101) and the Emerging Project Reserve (PWC 7101) as necessary.
6. Approve appropriation transfers from the Measure WW Administrative Cost project (funded in the current CIP in 2011/12 under Fund 540, Park Facility Impact Fees) to cover staff costs on all the individual Measure WW funded projects, as needed, to cover the total staff costs on those projects.
7. Appropriate the donation received from the Indo-American Community Federation of \$25,000 to 502PWC8745, Central Park Picnic Area.

5.3 APPEAL OF PLANNING COMMISSION APPROVAL OF CONDITIONAL USE PERMIT AMENDMENT FOR STARS DAY SPA – 46819 WARM SPRINGS BLVD. Public Hearing (Published Notice) to Consider a Third Party Appeal of a Planning Commission Decision to Approve an Amendment to a Conditional Use Permit (PLN2010-00106) to Allow Full-Body Massage Services at an Existing Day Spa Currently Offering Foot Massage Services Only (PLN2011-00177)

Contact Person:

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Executive Summary: On April 28, 2011, the Planning Commission approved an amendment to a Conditional Use Permit to allow full-body massage services at a day spa located in the Mission Square shopping center in the Warm Springs planning area. The previous spa owner obtained approval of a Conditional Use Permit (PLN2010-00106) from the Planning Commission in January 2010 to allow foot massage services at the establishment, but ownership of the business has since changed and the new owner wishes to run a day spa offering full-body massage services in addition to foot massage services. On May 6, 2011, the owner of a nearby day spa filed a third party appeal of the Planning Commission's decision on the grounds that she did not receive sufficient notice of the Planning Commission hearing, and was therefore unable to voice her opposition and concerns at that hearing (see Informational Item #3). She believes that the application should be required to go back before the Commission once again to give her and any other businesses who did not receive notices a chance to express their concerns and/or opposition to the proposal. Specifically, she is concerned about having a second massage establishment located in such proximity to her business for fear that the competition would drive down the cost, and thus the quality, of the services provided by the two establishments.

Fremont Municipal Code (FMC) Section 8-23121, Mailing of Notices and Publication in Newspaper, requires that the City notify all owners of property within 300 feet of the project site (or, as in the case, 1,000 feet for massage establishments per City policy), and publish a hearing notice in a newspaper of general circulation within the City at least 10 days prior to the hearing date. It does not require that staff notify tenants who rent spaces, only property owners. In this case, the owner of the building in which the appellant's business is located was notified and a notice was placed in a newspaper of general circulation 10 days prior to the hearing in accordance with FMC Section 8-23121, but the appellant did not receive a hearing notice since she is a tenant and not a property owner.

Because the City fulfilled its legal obligations for giving ample notice of the hearing as prescribed by FMC Section 8-23121, and because consideration of this appeal by Council will give the appellant sufficient opportunity to express her objections to the project in a public forum, staff recommends that the City Council not remand the matter to the Commission for a new hearing and render a final decision based on the merits of the project's compliance with the Municipal Code. In staff's opinion having two day spas that offer the same services in these two locations would not create an over concentration of

massage services in this area. As such, staff recommends that Council uphold the decision of the Planning Commission and deny the appeal.

BACKGROUND: The subject property was previously occupied by a motel until 1994 at which time it was demolished and ultimately replaced with the present-day shopping center in 1996. On August 10, 2000, the Planning Commission approved Conditional Use Permit PLN2000-00336 allowing a beauty salon to provide full massage services at the subject tenant space. That salon eventually went out of business and the CUP subsequently expired. On January 28, 2010, the Planning Commission approved PLN2010-00106 allowing foot massage services at a new beauty salon in the same tenant space. The spa/beauty salon has since changed ownership and the new owner now wishes to provide therapeutic body massage and facial services at the establishment in addition to the previously-approved foot massage services.

DISCUSSION/ANALYSIS:

Project Description: The applicant is proposing to operate a full-service day spa in an existing ±1,440 square foot tenant space located in the Mission Square shopping center. The spa will offer such services as facial and skin treatments and various types of therapeutic massage, including Swedish massage and acupressure. Business hours will run from 10:00 AM to 9:00 PM seven days a week. The applicant expects to employ 11 employees at full capacity: 8 massage technicians, two receptionists, and a business manager.

The applicant's floor plan features a reception area and product display area directly inside the entrance, with treatment rooms along both sides and a business office and utility room in the back of the space. No changes will be made to the floor plan or the exterior of the building.

General Plan Conformance: The existing General Plan land use designation for the site is Community Commercial. This land use designation is intended to allow for retail and personal services to meet the everyday and specialized needs of the people living or working in the subject planning area (in this case, the Industrial and Warm Springs planning areas). The proposal is consistent with the General Plan in that day spas offering massage services are permitted on land designated Community Commercial subject to approval of a conditional use permit. The following General Plan Goals and Objectives are applicable to the proposed project:

Fundamental Goal F-8 – A diversity of residential, recreational, cultural, employment and shopping opportunities.

Local Economy Objective LE 3.1 – Viable neighborhood shopping centers meeting the daily convenience shopping needs of City residents.

Analysis: The Mission Square shopping center offers a variety of retail stores and personal services; allowing the proposed day spa to locate at the subject site would provide a convenient service for those shoppers who wish to treat themselves to spa treatment while running other errands in the center, enabling them to obtain such treatments while there, rather than having to drive to a different location before or after completing their shopping. At present, there is only one beauty salon in the center offering traditional salon services such as haircuts and manicures/pedicures, along with a number of retailers and restaurants. The proposed use would be the only business in the center offering full-service

massage treatments, thereby expanding the range and choice of services and products available for consumers in the Warm Springs neighborhood. For these reasons, staff finds that the proposed use is consistent with the General Plan.

Zoning Ordinance Compliance: The project site is located within the Community Commercial (C-C) zoning district. This district was established to provide for a variety of retail and service commercial uses to serve the everyday and specialized needs of the residents of each individual planning area of the City (in this case, for the residents of the Industrial and Warm Springs planning areas). Fremont Municipal Code (FMC) Section 8-22148.05 requires approval of a conditional use permit for all massage establishments. The proposed use would offer full-body massage services and other similar therapeutic and relaxation services typically offered in day spa establishments. FMC Section 8-22148.05 also requires that operators of massage establishments comply with the provisions of Title IV, Chapter 7 of the Municipal Code which ensure that all massage activity taking place within the establishment is legitimate and all conduct by the establishment's staff and clientele is of an appropriate nature (see Informational Item #2 for this code section). The same code section also requires that the operator obtain a Massage Establishment License prior to approval of the conditional use permit; the applicant has already fulfilled this requirement and may now begin offering full-body massage services by licensed technicians should Council vote to deny the appeal.

FINDINGS FOR APPROVAL:

Conditional Use Permit: Per FMC Section 8-22509, the decision-making body must make the following findings in order to approve a conditional use permit amendment:

- (a) The proposed use is consistent with the General Plan;
- (b) The site is suitable and adequate for the proposed use;
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses; and
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large.

Discussion:

- (a) The proposed use is consistent with the General Plan in that it will offer full-body massage services in a shopping center where such services are not currently offered, and therefore fulfill a demand while also attracting additional patrons to the shopping center for the benefit of the other businesses in the center;
- (b) The site is suitable and adequate for the proposed use in that it is located in a large shopping center containing a wide variety of retail and service businesses which are compatible with a spa, and it is likely that the spa's customers will patronize other establishments in the shopping center before or

after getting their treatment. Furthermore, there is ample parking for the proposed use as well as the other tenants in this portion of the center, and the tenant space already meets all of the applicable building and fire safety codes governing the proposed use, so no significant modifications to the building or changes to the site need be made to accommodate the business;

- (c) The proposed use and design would not have a substantial adverse effect on vehicular, bicycle, or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services in that it will not generate significantly more daily trips on the surrounding roadway network than what the shopping center's mix of tenants was originally expected to generate, and it will not change existing sidewalk or bike lane layouts or result in the alteration or removal of any existing transit stops adjacent to the site;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses in that it will likely attract additional people to the shopping center who may patronize the other businesses in the area before or after getting their massage treatment, and the owners will be required to be licensed and to ensure that the facility only engages in providing legitimate massage services at all times; and
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large in that the nature of the business is such that it will not generate significant volumes of additional traffic to the shopping center, noise, or other undesirable or harmful byproducts that might adversely impact the health and welfare of the neighboring businesses and nearby residential neighborhoods.

Planning Commission Action: On April 28, 2011, the Planning Commission voted unanimously to approve the Conditional Use Permit Amendment to allow full-body massage services at the establishment in addition to the previously-approved foot massage services. According to the appeal letter (see Informational Item #3), the appellant did not receive notice of this hearing even though her business is located within the mailing radius that was used for the mailing of the public hearing notices. This is due to the fact that her mailing address contains a suite number while the hearing notice was sent to the main building address and the property owner/landlord's address, not to each individual suite within the building. As such, the appellant did not attend the Planning Commission hearing to voice her objections to the proposal.

Appellant's Basis for Appeal: The appellant did not receive notice of the Planning Commission hearing of April 28, 2011, because she is a tenant of the building where her business is located, not the owner of the property. She believes that the City Council should remand the item to the Planning Commission for a new hearing because she feels that there may be other nearby businesses who also did not receive a notice who might oppose the proposal for various reasons. She also argues that it was particularly important for her to receive notice due to the fact that her business is located less than 200 feet (two parcels) away from the project site and happens to offer the same services as the proposed use.

In her supplemental appeal statement (see Informational Item #4), the appellant also makes the following three claims:

- 1) That the staff report to the Planning Commission erred in stating that the proposed use would be the only one in the Mission Square shopping center to offer full-body massage services; and that in doing so, it misled the Commission into believing that it would provide a unique service to the area;
- 2) That allowing two massage establishments to be located so closely together would drive profits for both businesses down by forcing the owners to lower the prices for their services in order to compete with one another. She goes on to state that this would result in the two businesses offering inferior services since they would be forced to pay their employees less money due to decreasing profits caused by the competition; and
- 3) That because the applicant has begun illegally advertising massage services prior to obtaining final approval of the CUP Amendment from the City Council by putting up signage and handing out flyers, he may be the type of individual to flout the laws of the City governing massage establishments.

Staff's Response to Appellant's Argument: The City generally notifies tenants as well as property owners whenever it has the address data available in the address database that staff utilizes to generate mailing lists for hearing notices. In this case, the data was not available to staff when it generated the hearing notice mailing list for the April 28th Planning Commission meeting. FMC Section 8-23121 only requires that property owners be notified of public hearings, not individual tenants. Staff did notify the owner of the property on which the appellant's business is located, and, as such, it fulfilled the legal noticing requirements prescribed by the Municipal Code. While it is regrettable that a similar business located two parcels away did not receive notice of the Planning Commission hearing, it is not legally necessary to remand the item to the Commission for a new hearing. Moreover, consideration of the appeal by Council provides sufficient opportunity for the appellant to state her objections to the project. It should also be noted that staff has since updated its address database to include the suites of the multi-tenant properties within the notification radius. As such, all businesses with legitimate mailing address within 1,000 feet of the project site will have received notice of this appeal hearing.

In response to her claim (1), above: The appellant's business is located in a building that is next-door to the shopping center which happens to share the center's entrance off Warm Springs Boulevard as one of its access points. However, the building itself is located on a parcel under separate ownership from Mission Square and only shares a driveway with that shopping center; it is actually part of a small, two-building commercial complex located directly next-door to Mission Square called Dutra Plaza which has its own separate driveway off Warm Springs Boulevard, hence staff's statement that the two businesses would not be located in the same shopping center.

In response to her claim (2), above: The City does not protect the rights of individual business owners to maintain monopolies for a particular good or service; instead, the City views economic competition as a sign of a healthy economy and a benefit to the citizens of Fremont who pay for these goods and services since it provides them with choices. Staff is not aware of any information or studies that would support the conclusion that approve the application would create or contribute to an over concentration of massage services in the project area.

And finally, in response to her claim (3) above: As soon as the appellant brought it to staff's attention that the applicant was prematurely and illegally advertising full-body massage services, staff contacted the applicant and ordered the removal of all signage advertising the services. Staff then conducted an unannounced inspection of the property and found that all signage had indeed been removed. The appellant's concern that this particular applicant may be the type of individual to flout the law is speculation. The applicant's actions may have just as likely been unintentional, as he may have assumed that approval of the CUP Amendment by the Planning Commission was enough to allow him to begin advertising full-body massage services at the establishment even though an appeal had been filed.

FISCAL IMPACT: Not applicable.

ENVIRONMENTAL REVIEW: This project is exempt from the California Environmental Quality Act pursuant to Guideline 15301, Leasing of Existing Facilities.

ENCLOSURES:

- [Exhibit "A" – Project Plans](#)
- [Exhibit "B" – Recommended Findings & Conditions of Approval](#)
- [Informational #1 – Proposed Business Plan](#)
- [Informational #2 – Title IV, Chapter 7 of the Fremont Municipal Code \(Massage Establishments and Technicians Ordinance\)](#)
- [Informational #3 – Appeal Letter submitted by Appellant dated May 6, 2011](#)
- [Informational #4 – Supplemental Appeal Statement submitted by Appellant dated May 27, 2011](#)
- [Informational #5 – Project Summary Data](#)

RECOMMENDATION:

1. Hold the public hearing;
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15301, Leasing of Existing Facilities;
3. Find the project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives, and policies set forth in the Land Use and Local Economy Chapters of the City's General Plan as enumerated within the staff report; and
4. Deny the appeal and uphold the approval of Conditional Use Permit Amendment PLN2011-00177 as shown in Exhibit "A" and described in Informational Item #1, based on the findings and as conditioned by the Planning Commission as shown in Exhibit "B".

5.4 NILES CENTRAL REZONE - 37682 NILES BOULEVARD

Public Hearing (Published Notice) to Consider Planning Commission and Historical Architectural Review Board Recommendations on a City-Initiated Planned District (P-2011-232) to Provide Specific Development Considerations for a Future Commercial Mixed-Use Project on Two Lots (APNs 507-0828-005-00 and 507-0828-006-00) Comprising 4.07 Acres in the Niles Planning Area

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Executive Summary: The City Planning Manager has applied for a Planned District to control future development on two properties on Niles Boulevard in Niles as a precautionary measure to ensure future uses are consistent with the community's vision. The proposed rezoning to a Planned District would ensure that future development is consistent with the visions outlined in the Niles Concept Plan and Niles Design Guidelines. Staff recommends certain Planned District Regulations and Design Guidelines to guide development of the subject site. Staff recommends that City Council approve the project based upon findings. On May 26, 2011, the Planning Commission reviewed and approved the City Initiated Planned District on a 6-1-0-0 vote.

BACKGROUND: The City of Fremont and its Redevelopment Agency own two parcels totaling just over four acres on the north side of Niles Boulevard southeast of Niles Town Plaza. One parcel (0.93 acres) is currently developed with a public parking lot serving the Niles Parking District, and the other (3.14 acre) vacant parcel adjoins the railroad tracks from the southeastern edge of the Plaza to the curve of Niles Boulevard on the southeasterly side of the business district.

The subject site is currently zoned Community Commercial within a Historical Overlay District and designated as Community Commercial in the General Plan. In 2001 and 2002, the City adopted the Niles Concept Plan and the Niles Design Guidelines after extensive outreach and work with the community. The City and Agency have owned these properties for many years, and have spent several million dollars remediating the soil to facilitate future development adjacent to the recently-completed Niles Town Plaza. Over the years, several informal studies have been completed investigating what type of project might be appropriate for this unique area. The parcels represent a significant portion of the City's investment in the Niles community. The City has always anticipated working with a prospective development partner to create a project consistent with the existing community.

As part of his proposed 2011 budget, the Governor has proposed ending Redevelopment Agencies in California, which could result in the liquidation of all Agency-owned assets, including the larger 3.14-acre parcel. If this were to occur, the City would have less ability to shape the future development of the area. The purpose of this project is to preserve the community's vision for the properties in the form of a Planned District zoning designation that outlines use and development requirements.

DISCUSSION/ANALYSIS:

Project Description

The City proposes to establish a Planned District applicable to two parcels to guide future development thereupon. Various regulations and design guidelines are proposed for adoption that would require pedestrian-oriented main-street style commercial and mixed-use development on the site consistent with the commercial core character of the Niles community. Formulation of the Planned District relied upon guidance found in the Niles Concept Plan and Niles Design Guidelines. The proposed Planned District (Exhibit “B”) articulates specific standards and guidelines that further the vision of the documents for historic compatibility, main street format commercial development, and a pedestrian friendly development pattern. The proposed Planned District standards and guidelines do not establish deviations from the underlying C-C zoning district. Development within the Planned District will require subsequent project specific review by HARB, Planning Commission, and ultimately the City Council.

General Plan Conformance

The existing General Plan land use designation for the project site is Community Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because it proposes establishment of a Planned District that will guide development consistent with the Community Commercial land use designation. The following General Plan policy is most applicable to the proposed project:

Land Use Policy LU 2.14: A Community Commercial Center shall be a pedestrian-oriented commercial environment. To maintain an active pedestrian environment, buildings oriented toward sidewalks or public plazas and walkways shall be strongly encouraged. Retail uses shall be encouraged at ground level.

Analysis: The proposed Planned District encourages extension of commercial uses in a pedestrian-oriented environment consistent with the patterns of development in the Niles commercial district.

Niles Concept Plan Conformance

The proposed Planned District forwards the goals of the Niles Concept Plan. Particular goals applicable to this area include lining up circulation and view corridors with I and J Streets and encouraging a pedestrian crossing of the railroad tracks (Figures 8 and 9). The Land Use Plan of the Niles Concept Plan (Figure 7), consistent with the existing Zoning, anticipates commercial and mixed use development along Niles Boulevard with parking located to the rear of the lots adjacent to the railroad right-of-way.

Redevelopment Plan Conformance

The City of Fremont Redevelopment Plan for Niles exists to remove blight and improve the tax base by providing the right mix of uses within the Redevelopment area. The site in question has been previously unused due to its environmental contamination. The Redevelopment Agency funded remediation activities in 2010-2011. Development of the site for commercial and mixed uses in line with the proposed zoning would compliment the Redevelopment Agency’s investment in Niles Town Plaza and the neighboring sites.

Zoning Regulations

As set forth in Section 8-21811 of the Fremont Municipal Code (FMC), Planned District zoning may be initiated by the City Council, Planning Commission, or Planning Manager. The proposed Planned District has been initiated by the Planning Manager for the express purpose of preserving the community's vision for the area as expressed in the Niles Concept Plan and Niles Design Guidelines for any future development of the parcels in question.

Per FMC 8-21844(b), HARB is charged with determining whether the formation of the Planned District is compatible with the Historic Overlay District. HARB reviews proposals in relation to site plan and architectural review standards as indicated in FMC Section 8-21847. In this instance there are not specifically adopted regulatory standards applicable to the site. In general the Niles Concept Plan indicates preferences for development and improvements to the area. The Niles Design Guidelines include provisions for most of the Commercial Core area, but do not directly apply to the vacant former Union Pacific Site and City Parking lot site that are the subject sites of this Planned District. However, the documents do provide a strong contextual basis for considering HOD compatibility and community expectation and have been reviewed for consistency by staff. Ultimately, HARB must make a recommendation as to whether the proposed project is compatible with the HOD.

HARB discussion of the Planned District Regulations and Design Guidelines in relation to historic character:

The Historical Architectural Review Board (HARB) reviewed the item at the June 2, 2011 meeting. HARB members expressed concern about creating a two-sided main street in Niles, which was historically a one-sided rail town. They commented that the Planned District (PD) standards and guidelines would permit a development out of scale with the community, and recommended a reduction in height below that permitted with the existing zoning in order to preserve views of the hills from Niles Boulevard and to preserve the historic setting of Niles. The board indicated that they support provision of both public parking and any future project's required parking on the site, and support preservation of the sycamore trees as specified in the PD.

HARB Motion: The Planned District rezoning is compatible with the Niles HOD provided that the FAR, height, and setbacks are revised to reduce the apparent intensity of development, absent changes to the development standards HARB rejects the proposed rezoning. Additionally, HARB recommends that the Planned District include provisions that new development comply with on-site City parking standards.

Existing Zoning

The existing Community Commercial (Historical Overlay District) [C-C(HOD)] zoning would allow commercial mixed uses up to 40 feet in height, with a floor area ratio of 50% for a pure commercial project or 125% for a mixed use project.

- For the parcel owned by the Redevelopment Agency (RDA), the existing zoning would allow approximately 68,000 square feet of commercial uses or 171,000 square feet of combined commercial and residential uses in a mixed use project. For a mixed-use project, commercial square footage of only 13,000 square feet would be required for the RDA parcel (based upon approximately 440 feet of commercial frontage), and the remainder of the 171,000 total allowable square feet for the project could be residential. At 1,500 square feet per unit, that would equate to about 105 dwelling units.

- For the City-owned parking lot parcel, the existing zoning would allow 20,000 square feet of commercial uses or 50,000 square feet of combined commercial and residential uses in a mixed-use project. For a mixed-use project, commercial square footage of only 12,000 square feet would be required if the parking lot were replaced elsewhere and converted to a development project (based upon approximately 401 feet of commercial frontage). In the mixed-use scenario, 38,000 square feet would then be available for residential units (25 dwelling units assuming 1,500 square feet per unit).

Proposed Planned District

The proposed Planned District would be based upon the existing C-C(HOD) zoning district, and would allow the general development intensities described above, with some site-specific modifications, as follows:

- Specifying the required levels of review for any future development.
- Allowable uses would be further refined to prevent certain incompatible uses from being established on the pedestrian-oriented main street and to limit the proliferation of certain other uses in order to encourage a good mix of commercial uses.
- Site planning guidelines are proposed to inform access, parking, and circulation while maximizing views of the hills.
- Architectural guidelines are proposed to achieve a pedestrian-oriented main-street development style consistent with the existing commercial district.
- HARB review is required for any future development, and guidelines are proposed to create consistent design in terms of architecture and streetscape.
- Specific landscape architectural provisions require preservation of the Sycamores along the street, creation of attractive pedestrian walkways, and prevention of soundwalls adjacent to the railroad.
- Exceed the minimum requirement for commercial development specified by the mixed-use ordinance to support commercial uses facing Niles Boulevard.

See Exhibit B for specific regulations and design guidelines.

Parking

A portion of the project is within the Niles Parking District. The parcel fronting Niles Boulevard is one of two lots that provide parking for the businesses in Niles. These businesses pay a duplicate amount of their annual business taxes in order not to be required to provide additional parking for the existing uses in the main street pattern of development.

Although the City owns the public parking lot, the parking spaces could be replaced elsewhere within the parking district to facilitate a main street style development fronting on Niles Boulevard. The City would be amenable to working with a prospective developer to incorporate parking required for the overall district into a project on the subject site. Negotiations of such an agreement would include consideration of issues such as ease of access to the parking from Niles Boulevard and design of the parking lot or garage. The current project scope does not include further discussion of future potential parking agreements between the properties, but encourages arrangements that would result in maintaining parking available for the existing commercial district while facilitating main-street style development on the City-owned parcel.

Design Analysis

Site Planning

The site stretches from the southeastern edge of Niles Town Plaza to the curve in the road at the end of the Niles commercial area. I and J Streets intersect with Niles Boulevard across from the properties. Toward the eastern side of the properties, several pockets of commercial businesses exist between the parcel and Niles Blvd. These parcels are privately-owned and outside of the scope of this review. As the properties currently exist, access would be via driveways or private streets lined up with I, J, and at the southeastern curve of Niles Boulevard. Commercial uses would front Niles Boulevard behind on-street diagonal or parallel parking and a generous sidewalk. Interior vehicular accessways and pedestrian walkways would allow circulation within the development, to adjoining developments, and to the public right-of-way. Access to any community parking resources subject to agreement by all necessary parties would be well-marked and easily accessible by car and on foot.

Architecture

A new development would need to respect the traditional rhythm of the Niles commercial area. Block faces and corners along Niles Boulevard would be occupied by commercial spaces designed and demised in 25, 50, and 75-foot increments, as is most common within the Niles commercial area. This layout would allow between four and twelve storefronts to be located between I and J Streets on the City parcel. In order to enhance the relationship to existing development in the area, variations in building height, architecture, materials, and colors would be used with a traditional main-street design to further define each of the shops' individuality.

The architectural standards are consistent with the Niles Concept Plan and the Niles Design Guidelines. For example, the Design Guidelines call for a variety of architectural styles, underscored on page 15 of the guidelines, which calls for attention to relative characteristics such as scale, texture, form, and contrast rather than adherence to a particular style category in order to get at the variety that is essential to the character of Niles. The concept plan supports the use of the 25, 50, and 75-foot storefront patterns.

Open Space/Landscape Design

The project shall incorporate the existing line of Sycamores between I and J Street into any future development of main street commercial uses. Street furniture is encouraged on public sidewalks and pedestrian accessways. The City's Landscape Architecture Requirements and Policies further specify requirements applicable to this and other projects.

View Impacts

The Niles Concept Plan identified maximizing views of the hills as a goal of the layout of any project in this vicinity. There is ongoing discussion within the community about what scale of development is appropriate in this area, and the City has heard arguments ranging from disallowing all development on the north side of Niles Boulevard to allowing the commercial buildings permitted under the current zoning. In line with the Niles Concept Plan and the current zoning, staff recommends maximizing views of the hills by aligning I and J streets with private streets or driveways of the private development and requiring varying heights of the development facing Niles Boulevard. This is consistent with the Niles Concept Plan, and does not require a change in zoning and General Plan to limit development. People walking or driving cars up and down the street would be able to take advantage of the views along the way, while experiencing a two-sided main street environment.

Register Resources

A Fremont Register Resource is shown on the General Plan for the area from 37500 to 37800 Niles Boulevard. This resource refers to the original town of Vallejo Mill, which was the precursor to the Niles name. The original settlement of Vallejo Mill would have extended approximately from the railroad in this vicinity to Alameda Creek (prior to its channelization). As far as can be determined based upon staff's preliminary research, no physical manifestations of portions of this early town remain on the parcels in question, which have been remediated without finding construction of that period. No changes to a Fremont Register Resource are proposed.

The Planning Commission considered the Niles Central Rezone at their regular meeting of May 26, 2011. Staff gave a presentation laying out the impetus for the project and the purpose--to require specific future projects to develop the site through a legislative action rather than by application for a use that may be otherwise permitted that could be incompatible with the neighborhood patterns. The community raised general concerns related to the scale of the potential development, the inclusion of residential, protection of the existing public parking, and the level of involvement of the community in this and any future project. The Commission recommended the project to City Council. One Commissioner voted no on the basis of not having data about the market impact the zoning changes may have on the potential developability of the parcel.

FISCAL IMPACT: No fiscal impact upon the City would result from this action.

ENVIRONMENTAL REVIEW: This project is exempt from environmental review per section 15061(b)(3), which applies when the activity has no potential for causing a significant effect on the environment. The proposed planned district does not expand the range of allowable uses of the site or deviate from existing development standards of the underlying zoning designations. The Planned District merely establishes a review framework for subsequent development that will be subject to individual discretionary and CEQA review.

ENCLOSURES:

- [Draft Ordinance](#)
- [Exhibit "A": Planned District Rezoning Map](#)
- [Exhibit "B": Planned District Regulations and Design Guidelines](#)
- [Exhibit "C": Finding](#)
- [Informational 1: Location Map & Info Sheet](#)
- [Informational 2: Draft Planning Commission Minutes](#)

RECOMMENDATIONS:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15061(b)(3) of the CEQA Guidelines because the activity (Planned District) has no potential for causing a significant effect on the environment.
3. Find Planned District P-2011-232, as shown on Exhibits "A" & "B", is compatible with the Niles Historical Overlay District and is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the policy set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Niles Concept Plan.

4. Find the Planned District Rezoning Map, Regulations and Design Guidelines depicted in Exhibits “A” & “B” fulfill the applicable requirements set forth in the Fremont Municipal Code.
5. Introduce an ordinance rezoning the property from Community Commercial (Historical Overlay District) [C-C(HOD)] to Planned District P-2011-232 (Historical Overlay District) [P-2011-232(HOD)] as depicted on Exhibit “A” and adopt Planned District Regulations and Design Guidelines as shown on Exhibit “B” subject to the finding in Exhibit C.
6. Direct staff to prepare and the clerk to publish a summary of the ordinance.

5.5 URBAN HOUSING GROUP PROJECT PLANNED DISTRICT MAJOR AMENDMENT, NAMING OF A CIVIC PARK, AUTHORIZATION TO EXECUTE VARIOUS AGREEMENTS – 3651 WALNUT AVENUE (PLN2011-00190)

Public Hearing (Published Notice) to Consider a Planning Commission Recommendation for a Major Amendment to Planned District P-2009-9 to Modify Conditions, Allow Minor Site Plan Changes, and to Reduce the Amount of Required on-site Parking for 301 Dwelling Units, an Approximately 17,000 Square Foot Civic Park, and Approximately 1,200 Square Feet of Office/Commercial Space; Naming of a Civic Park; Authorization to Execute Various Agreements

Contact Person:

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Dept.:	Community Development	Community Development
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Executive Summary: The City Council is being asked to consider a Major Amendment to Planned District P-2009-9, which would modify some development conditions, allow site plan adjustments, and to reduce the amount of required on-site parking by an 57 spaces (from 502 to 445), for a housing project known as “Urban Housing” located in the City Center and approved in March 2009. Staff believes that the proposed Major Amendment meets City goals and objectives in creating well-designed, in-fill multi family housing development. Because the review of building permits for Urban Housing is underway, with an anticipated permit issuance date in August, approval of the Major Amendment is critical for the applicant to proceed forward and commence with the construction of project. The report also recommends that the owner pay full fair market value for the vacated portion of California Street that will be conveyed to the developer and authorizes the City Manager to enter into various agreements with the developer that are necessary to implement the project, including an agreement to pay for the vacated portion of California Street and street improvement project excess costs; a civic park and streetscape installation maintenance agreement; and a pedestrian bridge easement and maintenance agreement. This report also recommends that the Civic Park to be constructed by Urban Housing be named “State Street Plaza”. On May 26, 2011 the Planning Commission reviewed the proposed Major Amendment to Planned District P-2009-9 and recommended by a unanimous vote that the City Council approve the proposed Major Amendment based on the findings and subject to the conditions of approval contained in Exhibit “1”.

BACKGROUND: Numerous entitlement applications have been submitted to the City over the last ten (10) years relating to the subject site. A commercial office project was submitted in early 2000, reviewed and ultimately approved by the City Council, but was not constructed due to market forces and economic reasons. Outlined below are the two most recent proposals for the subject site and are pertinent to the Major Amendment application.

2006 SummerHill Project: In December 2006, the City Council on recommendation of the Planning Commission approved a Precise Planned District, Vesting Tentative Tract Map 7836, Preliminary Grading Plan and Street Abandonment application for a portion of California Street, to allow

SummerHill Homes to develop 227 condominium dwelling units, a 9,000 SF Civic Park and approximately 5,000 SF of commercial space. The proposal was to construct two principal residential buildings (4/5 stories) that would have been bisected by the extension of State Street through the project site from Beacon Avenue to Walnut Avenue. A Civic Park was to be constructed in the middle of the State Street extension. A copy of the approved site plan—SummerHill Homes - Walnut Avenue Condominiums—is enclosed (Informational 1). The project did not proceed forward to construction because of the economic climate.

2009 Urban Housing Group Project: In March 2009, the City Council on recommendation of the Planning Commission approved a Precise Planned District, Vesting Tentative Tract Map 7986, Preliminary Grading Plan and Street Abandonment application for a portion of California Street to allow for the development of 301 dwelling units, a 17,000 square foot Civic Park and approximately 1,200 square feet of commercial space. These approvals replaced the 2006 SummerHill Project approvals described above. The applicant proposes to construct two residential buildings (4 stories) that will frame the Civic Park. The Civic Park will be constructed as an extension of State Street. A total of 502 on-site and 31 off-site (on adjacent streets) parking spaces were approved as part of the project. A copy of the approved site plan is enclosed (Informational 2).

Post Entitlement Approval Actions:

Metropolitan Transportation Commission (MTC) Grant & Street Improvement Project: MTC established a Transportation for Livable Communities (TLC) Program to support activities encouraging pedestrian, transit, and/or bicycle trips and to spur compact development of housing, downtowns, and regional activity centers. The City applied for and was selected to receive a \$1.6 million dollar grant to cover the construction cost of street improvements related to the Urban Housing Project. The City's application requested \$1.6 million to fund streetscape improvements in the vicinity of the development on Beacon Avenue between Liberty and California, along California Street and along the Walnut Avenue frontage abutting the site. Urban Housing Group supported the City's application and a portion of its payment for the vacated California Street will be used to provide \$400,000 (20% match required) in matching funds. City staff is reviewing the final street improvement plans for the Grant Project and will be before City Council in June 2011 to award the contract. Through negotiations and discussions with the applicant, it was determined that any cost overruns in excess of \$2.0 million dollars (total grant fund) would be the responsibility of the developer. Staff is requesting that the City Manager receive a delegation of authority to execute the agreement to pay for the vacated portion of California Street and street improvement project excess costs.

Permit Review: Staff is currently reviewing all on-site improvement plans and building permits associated with the project with a target of early August 2011 for issuance of the first permit. The first building permit that will be issued will be the parking garage permit which will be a structure with the residential building wrapping around it.

Procedure for Tonight's Hearing: At tonight's hearing, the City Council is asked to consider:

1. A Major Amendment to Planned District P-2009-9, based on findings specified in Section 8-21813 of the Fremont Municipal Code to permit modifications to a previously approved precise planned district.
2. An on-site parking reduction per Section 8-22003 of the Fremont Municipal Code to permit the applicant to reduce the required parking spaces by 57 parking spaces.

3. Modify the approved site plan to allow parallel parking spaces on Beacon Avenue where angle parking had originally been approved. The amended project will provide 33 on-street parking spaces.
4. Authorization to allow the City Manager to execute various agreements with the developer.
5. Naming the Park within the project “State Street Plaza”.

DISCUSSION/ANALYSIS:

General Plan Conformance

The existing General Plan land use designation for the project site is Central Business District. This land use designation is intended to provide a mix of land uses including retail, office, residential, government and cultural uses in a compact, well-defined area to encourage a lively, pedestrian-friendly environment in the City’s Center as opposed an office district that is only busy during the workweek and depopulated on evenings and weekends. The following General Plan Land Use and Local Economy goals, objectives and policies are applicable to the proposed project:

Fundamental Land Use Goal F5 – *A vibrant, well-defined, visually distinctive central business district as the focus of the City’s governmental, cultural, and commercial activity.*

Land Use Policy 2.7 – *Site design and building development in the Central Business District shall be oriented toward pedestrians and transit. To maintain an active pedestrian environment with buildings oriented towards streets, sidewalks or public plazas shall be strongly encouraged. Retail uses shall be encouraged at the ground floor. Building orientation, setbacks, parking locations and building design shall be evaluated for how each element encourages continuity between developments.*

Land Use Policy 2.9 – *Public open spaces and plazas shall be strongly encouraged through the CBD. Such uses should be visible and accessible from public walkways and be appropriately landscaped with opportunities offered for sitting.*

Analysis: The ultimate project and proposed amendment features a pedestrian-friendly design with the live/work units along the civic park that access out onto the park, wide sidewalks with enhanced landscaping on abutting streets, and a parking garage surrounded by buildings. The development will have some live/work units on the ground floor and in other cases patios that are also at the ground floor level. The site is located approximately ½ mile from the Fremont BART Station and numerous Alameda County Transit bus lines run past the area of Fremont Boulevard, Mowry Avenue and Paseo Padre Parkway, therefore, public transportation and walking provide reasonable transportation alternatives to the site.

Zoning Regulations: The City Council amended the subject site’s zoning from Central Business District (C-B-D) to Planned District P-2009-9 on March 24, 2009. The existing Planned District (P-2009-9) will allow for the construction of 301 dwelling units, an approximately 17,000 square foot civic park, 1,200 square feet of commercial/office space and 502 on-site parking spaces.

Parking Reduction Analysis: The required parking spaces for the project consists of 352 for the residential units, an additional 151 for guest parking and 10 spaces for the live work units, therefore requiring a total of 513 parking spaces for the residential project. The project satisfied the requirement with 502 on-site parking spaces within the parking structure, 14 motorcycle spaces and 100 bicycle

spaces. The zoning ordinance allows for a credit of one auto space per eight bicycle spaces. This yields a total of 514 spaces, thus the residential portion of the project met the parking space requirements as prescribed in the FMC. As part of the Planned District approval in March 2009, the City Council made a parking modification finding to allow a 4 parking space reduction as it related to the 1,200 square foot of office/commercial space (300 SF/1,200 SF = 4 parking spaces). In part this recognized that the project called for construction of 42 new on-street parking spaces.

The applicant is now seeking a further 57 parking space reduction for the project. The applicant has completed some analysis and research of similar projects in northern and southern California and has concluded that with a parking ratio of 1 space per bedroom, the garage spaces are likely to be underutilized by as much as 29%. Additionally, it should be noted that the revised streetscape design calls for parallel vs diagonal parking. As a result, only 33 new on-street parking spaces will be constructed.

The following table outlines current FMC requirements and the parking proposal:

Number of Units	Number of Bedrooms	Resident Parking Requirements	Guest Parking Requirements	Total Parking Required	Total Parking Proposed
200	1 bedroom	200 (1 covered space per unit)	100 (.5 uncovered space per unit)	502	445
101	2 bedroom	151.5 (1 covered space per unit & .5 uncovered space per unit)	50.5 (.5 uncovered space per unit)		
Livework (work portion)		-	-	10	10
Commercial		-	-	.4	.0

When the original project was submitted in mid-2008 staff and the applicant had numerous discussions surrounding the amount of on-site parking for the project. Staff felt that if there was a place to reduce that amount of required parking it should be on project of this nature, however, the applicant was unsure at the time and wanted to proceed with the typical suburban parking space requirements.

The draft Downtown (Midtown) Plan suggests that residential uses provide 0.75 spaces/unit for non-exclusive use, or 1.0 spaces/unit for exclusive use, with a maximum of 2.0 spaces/unit. Accordingly, using the proposed Downtown standards the subject project could provide 227 spaces for non-exclusive use, or 302 for exclusive use, with a maximum of 602 on-site parking spaces allowed. The applicant is proposing a total of 445 on-site parking spaces, well within the proposed parking standards for future Downtown Plan.

City staff has also commenced a Parking Study related to the parking space requirements within TOD, Senior Housing and Affordable Housing Projects. The idea behind the Study is to more accurately reflect parking standards based on demographics, density of development, and location of project related to transit/employment. Recent research has shown that the above factors affect the number of parking spaces used within a project and the typical suburban parking standards provide much more than required. Therefore, based on the research completed to date for the Parking Study a reduction of 61 (57 spaces in this PD Major Amendment, 4 spaces originally granted) or 12% of the total required parking spaces is well within the Study findings. Planning staff anticipates that the Parking Study will be presented to City Council for review in fall of 2011 along with a proposed update to citywide parking standards.

The subject property is also within close proximity to numerous bus lines and a BART station, so it is reasonable to assume that many residents/visitors will walk, bike, and take transit, instead of driving an automobile. Furthermore, the overall design of the project will contribute to a pedestrian-oriented environment consistent with the vision of the Central Business District Concept Plan and the policies of the General Plan, and therefore, staff recommends a reduction of 61 parking spaces (57 spaces PD Major Amendment, +4 spaces originally granted) to the overall project, per Section 8-22003 (d)(i)(ii) and (iv) of the FMC. As noted earlier in the report a total of 33 on-street parking spaces will also be constructed on the Walnut Avenue, Beacon Avenue, and California Street frontages abutting the site.

Beacon Avenue: Beacon Avenue is currently a four-lane commercial service street between California Street and Liberty Street as it abuts the project site. As part of Planned District P-2009-9, in order to facilitate the reconfiguration and maintain the minimum ten-foot wide sidewalk in the public right-of-way, the developer was going to dedicate two feet along the project frontage, increasing the right-of-way width from 86 feet to 88 feet. Beacon Avenue was going to have on-street diagonal parking on the Urban Housing side of Beacon Avenue (Informational 3) as part of the original approvals. However through the Downtown Planning effort there was a desire to review the design of all streets within the District. The reconfigured Beacon Avenue (Informational 4) would now have one vehicle and bike lane in each direction, on-street parallel parking, and 15-foot wide sidewalks. These new street designs have been reviewed by the Planning Commission and City Council during Work Sessions over the last year as part of the Downtown Plan. Exhibit "E" Sheet A-111 (Site Plan) highlights the new site plan that has been modified to have parallel parking along Beacon Avenue.

California Street Vacation: In March 2009 the City Council conditionally approved the general vacation of a portion of California Street as it abuts the Urban Housing parcel of land, subject to the recordation of the Final Map and satisfaction of other conditions of approval, including the execution of a Park Maintenance and Capital Replacement Agreement. Urban Housing requested the general vacation so that a portion of the street could be incorporated into their project design. The proposed general vacation will abandon the northern half (two lanes), an approximately 30 foot by 324 foot section totaling approximately 12,300 square feet, of California Street between Beacon Avenue and Walnut Street. The current right-of-way is 102 feet with the reconfigured roadway being 72 feet wide. The reconfigured California Street would have one vehicle and bike lane in each direction, sidewalks and on-street parking on the north (project) side only. The approval of the conditional vacation included conveyance of the vacated right-of-way to the developer in consideration of the developer's agreement to: (1) dedicate an approximately 1000 square feet of Beacon Street frontage to the City, (2) maintain the Civic Park, including the emergency vehicle access portion, at its cost during the period of time the

project is a rental project, and (3) make a contribution to the City in the amount of \$1,500,000, plus consumer price index adjustments, for the Civic Park maintenance and capital replacement purposes when the project becomes a for sale project.

The applicant has requested that the California Street transaction be restructured. The strip of vacated California Street to be conveyed from the City to the developer has been appraised at a fair market value of \$473,000. The applicant proposes to pay this amount to the City. The City will use these monies as the 20% local match in connection with the TLC grant as outlined earlier in the staff report (under Metropolitan Transportation Commission (MTC) Grant & Street Improvement Project). Any excess monies from the payment for the California Street right-of-way (after 20% Grant match) the monies will be applied to reduce the applicant's payment to the Park Maintenance and Capital Replacement Fund that the applicant is required to establish (Recommendation 7).

Park Name – State Street Park: Consistent with the naming policy for Parks within the City, it is City Council's role to name new parks. Within the Downtown Plan that is currently being prepared there are a number of other small parks/promenades that are meant to offer visitors, residents or shoppers a place to relax and enjoy the surroundings. Staff has had a number of discussions related to how these small parks/promenades should be named and propose to name them based on geography. By doing so, staff believes that people will be able to identify the location of the park by the parks name. The Recreation Commission at their regular meeting of June 2, 2011 reviewed and recommended that City Council approve the name "State Street Plaza" for the subject park.

Civic Park and Streetscape Installation Maintenance Agreement: As part of the approval of the original project Urban Housing is required to develop the Park as a 'turn key project' for the City, for which they will receive a credit towards their park dedication and park facilities fees. Urban Housing is also required as a condition of approval to maintain the park for the City to City specifications for as long as the project is a rental project. Park maintenance shall be transferred to the City when the development is converted to a condominium project. Prior to the sale of the first condominium unit the owner is required through the conditions of approval (deed restriction) to contribute \$1.5 million dollars to the City, increased at the Consumer Price Index in the San Francisco-Oakland-San Jose area starting five years after acceptance of the park. The contribution will be used as a Maintenance and Capital Funding source for the maintenance and improvements of civic parks within the Downtown area. Staff is requesting that the council authorize the City Manager to execute the Civic Park and streetscape installation maintenance agreement (Recommendation 8).

Pedestrian Bridge Agreement: As part of the original approval a pedestrian bridge will traverse the park connecting the two buildings at both the third and fourth floors. The city will need to grant an easement to the developer over the Civic Park once the park is accepted by the City. Also, a maintenance agreement is required to ensure the bridge is properly maintained. Staff is requesting that Council authorize the City Manager to execute the Pedestrian Bridge easement and maintenance agreement (Recommendation 9).

FINDINGS FOR APPROVAL

Planned District Major Amendment:

Pursuant to Section 8-21813 of the Fremont Municipal Code, the City Council may adopt an ordinance to allow a Planned District Major Amendment to an already established Planned District if the following findings can be made:

- (a) **The proposed "P" district, or a given unit thereof, can be substantially completed within four years of the establishment of the "P" district** because the original and proposed amendments can be completed in the time frame specified and the applicant is proposing to acquire building permits in August 2011.
- (b) **That the streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and the project will not generate traffic in such amounts as to overload the street network outside the "P" district** because the development is in conformance with existing General Plan Policies and a Transportation Impact Analysis was conducted as part of the original project and concluded that the traffic generated would not have a significant impact on existing levels of service on the surrounding roadways.
- (c) **That the area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development** because at such time redevelopment of the surrounding area occurs, new development would be reviewed for conformity with the then standards adopted to ensure substantial compatibility with the proposed development and existing site standards.
- (d) **That the "P" district is in conformance with the General Plan of the City of Fremont** because the project conforms to the Central Business District Concept Plan designation of High Density Housing Allowed (50 dwelling units (minimum) per acre), is consistent with and implements the goals and policies of the Land Use and Housing Chapters of the General Plan as enumerated within the staff report. The applicant has applied for a Density Bonus to be allowed to develop above the maximum of 70 dwellings per acre as prescribed in the City's General Plan to 73 dwelling units per acre.
- (e) **That the existing or proposed utility services are adequate for the population densities proposed. The site is well served by utilities** because none of the responsible utility companies have stated they will be unable to provide the required services to the site.
- (f) **All public improvements or facilities required as a part of this approval are directly attributable to the proposed development** and are required for reasons related to public health, safety and welfare.

Parking Modification Finding (FMC Section 8-22003(a)(2)(d)):

- (i) Due to the site's proximity to alternative transportation (approximately 1/2 mile from Fremont BART and AC transit lines and stops adjacent to the sites Walnut Avenue and Beacon Avenue frontages), the recommended reduction of 61 parking spaces for the project is warranted as alternative transportation is a convenient option for the *residents* of the project.

- (ii) Due to the projects applicant's desire to create a pedestrian environment as well as the site's location within the City Center, the requested reduction of 61 parking spaces is warranted as the desire is to become less dependent on the motor vehicles within the City Center and more dependent on other forms of transportation (walking/biking/transit).
- (iii) Due to proposed development of 33 on-street parking spaces, the requested reduction of 61 parking spaces is warranted as these on-street parking spaces will provide a location for guests to park, while not impacting other surrounding neighborhoods or areas.
- (iv) That a deviation from Section 8-22009(g)(2) of the FMC which requires a minimum ten-foot inside wheel radius at changes in drive aisle direction, is warranted as drivers within parking garages typically expect a more constrained layout and the majority of drivers within the parking garage will be residents of the development.

The findings above are also contained in Exhibit "1" enclosed.

FISCAL IMPACT:

On November 23, 2010 the City Council adopted a resolution to collect Development Impact Fees at 50% of their full amounts in the Downtown until December 31, 2011. The rational behind the concept was to provide incentives for new business and developments project within the Downtown during this economic downturn. The fee reduction is temporary and if no further action is taken in the interim, the City will begin collecting the full fee again on January 1, 2012.

Development Impact Fees

<i>Urban Housing Project</i>	<i>2008 Full Impact Fees</i>	<i>50% Current Collection Rate</i>
301 Units	\$ 8,147,167.00	\$ 4,073,583.50

It is expected that the City General Fund contributions (or other non-impact fee sourced contributions) to infrastructure projects will cover the gap, caused by temporarily collecting impact fees at a lower rate. However, to the extent that deficiencies in infrastructure results from project delay due to temporary collection of fees at lower rates, the City will account for and not pass on these deficiencies to future development projects when impact fees are updated.

ENVIRONMENTAL REVIEW: An Initial Study, Negative Declaration, and Mitigation Monitoring Plan were previously prepared and circulated for the original project. The environmental analysis identified concerns regarding potential impacts to air quality, biological resources, and noise. The Negative Declaration included mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures are conditions of approval for this project. The applicant has agreed to implement mitigation measures that would reduce the impacts the project may have to a less-than-significant level.

CEQA Guideline 15162 states that no subsequent analysis is required unless the lead agency determines that: 1) substantial changes to the project are proposed; 2) substantial changes in circumstances of the project occurred potentially resulting in new or increased severity of previously identified impacts; or 3)

new information of substantial importance that was not known and could not have been known when the prior environmental determination was made.

The proposed Planned District Amendment does not change the findings of the prior environmental analysis in that it would result in the same use and development of the site. No substantial changes in the circumstances for impact analysis have occurred nor has any new information that could not have been known when the prior analysis was completed been discovered. The proposed changes are consistent with the adopted Mitigated Negative Declaration and Mitigation Monitoring Plan, and no further analysis is required.

Public Notice and Comment: A total of 142 notices were mailed to owners and occupants of all properties within 300 feet of the site on May 26, 2011. A Public Hearing Notice was also published in the Argus and Tri-City Voice.

ENCLOSURES:

- [Draft Ordinance](#)
- [Exhibit “1” Revised Conditions of Approval - Precise Planned District – P-2009-9](#)
- [Exhibit “E” Revised Site Plan - Replaces Sheet A-1 with Sheet A-111](#)
- [Information Item 1 - SummerHill Project Approved Site Plan – 2006 \(rescinded now\)](#)
- [Information Item 2 - Urban Housing Approved Site Plan – 2009](#)
- [Information Item 3 - Cross Section of Beacon Avenue – Per Original Approval](#)
- [Information Item 4 - Revised Cross Section of Beacon Avenue – Per Proposed Amendment](#)
- [Information Item 5 - Location Map & Info Sheet](#)
- [Information Item 6 - Draft Planning Commission Minutes](#)

RECOMMENDATION:

1. Hold public hearing.
2. Find that consistent with CEQA Guideline 15162, no changes to the project or site circumstances have occurred, not has new information of substantial importance been discovered, and the previous adopted Mitigated Negative Declaration and Mitigation Monitoring Plan are still valid and no further environmental analysis is required, and this action reflects the independent judgment of the City of Fremont.
3. Find that the Planned District Major Amendment (PLN2011-00190) to Planned District P-2009-9 is in conformance with the relevant provisions contained in the City’s current General Plan. These provisions include the designation, goals, objectives and policies set forth in the General Plan’s Land Use Chapter and enumerated with in the staff report.
4. Find that the proposed changes amending certain conditions of approval as shown in underline and strike out in Exhibit “1” and replacing Sheet A-1 with Sheet A-111 in Exhibit “E” (Site Plan only) of Planned District P-2009-9, fulfills the applicable requirements set forth in the Fremont Municipal Code.
5. Introduce an ordinance approving a Planned District Major Amendment (PLN2011-00190) to Planned District P-2009-9, as shown on Exhibit “1” findings and conditions of approval and Exhibit “E” (Site Plan only).
6. Authorize the City Manager to execute the agreement to pay for vacated portion of California Street and Street Improvement Project excess costs.

7. Approve “State Street Plaza” as the name of the Civic Park within the project.
8. Authorize the City Manager to execute the Civic Park and Streetscape Installation Maintenance Agreement.
9. Authorize the City Manager to execute the Pedestrian Bridge Easement and Maintenance Agreement.

6.1 Report Out from Closed Session of Any Final Action

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
June 21, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 28, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 5, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 12, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 19, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 26, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
		August Recess		
September 6, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 20, 2011	TBD	Work Session	Council Chambers	Live
September 27, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 3, 2011	4-6 p.m.	Joint Council/FUSD Meeting	Council Chambers	Live
October 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 18, 2011	TBD	Work Session	Council Chambers	Live
October 25, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live